

2008-1461  
(SERIAL NO. 09/871,349)

---

In The  
United States Court of Appeals  
For The Federal Circuit

IN RE PAUL J. BRYAN

APPEAL FROM THE  
UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

---

BRIEF OF APPELLANT

---

Mr. Paul J. Bryan, *pro se*  
413 East Millbrook Road  
Raleigh, NC 27609  
(919) 248-5137

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Paul Bryan v. \_\_\_\_\_

No. 2008-1461

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)  
Paul J. Bryan \_\_\_\_\_ certifies the following (use "None" if applicable; use extra sheets  
if necessary):

1. The full name of every party or amicus represented by me is:

Paul J. Bryan \_\_\_\_\_

2. The name of the real party in interest (if the party named in the caption is not the real  
party in interest) represented by me is:

Paul J. Bryan \_\_\_\_\_

3. All parent corporations and any publicly held companies that own 10 percent or more  
of the stock of the party or amicus curiae represented by me are:

None \_\_\_\_\_

4. The names of all law firms and the partners or associates that appeared for the party  
or amicus now represented by me in the trial court or agency or are expected to appear in this  
court are:

Paul J. Bryan \_\_\_\_\_

10/7/08

Date

Paul J. Bryan  
Signature of counsel

Paul J. Bryan

Printed name of counsel

Please Note: All questions must be answered

cc: \_\_\_\_\_

## TABLE OF CONTENTS

Table of Authorities .....	i
I. Statement of Related Cases .....	1
II. Jurisdictional Statement .....	2
III. Statement of Issues Presented for Review .....	3
IV. Statement of Case .....	4
V. Statement of Facts .....	6
A. The Present Invention .....	6
B. The <i>Elrod</i> Patent .....	7
VI. Summary of Argument .....	9
VII. Argument .....	11
A. The Applicable Standard of Review .....	11
B. Claims 1-5, 7-11, 13, 14, and 15 are not Obvious Under 35 U.S.C. § 103(a) as Being Unpatentable Over <i>Elrod</i> .....	11
1) There is a Functional Relationship Between the Printed Matter and the Structural Components of the Game Apparatus .....	12
2) The Claimed Invention is New and Nonobvious over <i>Elrod</i> .....	23
3) The Examiner's Claim construction Affirmed by the Board is Wrong Because the Alleged Printed Matter Limitations Were Excised From the Claims Prior to the Claim Construction	

Analysis .....	25
4) The Board's Construction is Unreasonably Broad, Inconsistent with the Specification, and Inconsistent with How a Person of Ordinary Skill in the Art Would Construe the Claim Terms.....	30
5) The Examiner's Arguments are Flawed and the Board's Decision is Unsupported and Based on the Examiner's Flawed Arguments.....	33
VIII. Conclusion.....	42
Addendum BPAI Decision  US 4,998,736	

## TABLE OF AUTHORITIES

	<u>PAGE</u>
<b>Cases</b>	
<i>Gechter v. Davidson</i> , 116 F.3d 1454 (Fed Cir. 1997).....	11
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d. 967 (Fed. Cir. 1995) (en banc) aff'd, 517 U.S. 370 (1996) .....	11
<i>In re Gulack</i> , 703 F.2d. 1381 (Fed. Cir. 1983).....	19, 20, 21, 24, 27
<i>In re Miller</i> , 418 F2d. 1392 (CCPA 1969) .....	20
<i>In re Nagi</i> , 67 F.3d. 1336 (Fed. Cir. 2004) .....	21
<i>Alteris, Inc. v. Symantec Corp.</i> , 318 F.3d. 1363 (Fed. Cir. 2003) .....	26
<i>In re Hyatt</i> , 211 F.3d. 1367 (Fed. Cir. 2000).....	26
<i>In re Cortright</i> , 165 F.3d. 1353 (Fed. Cir. 1999) .....	26
<i>Phillips v. AWH Corp.</i> , 415 F.3d. 1303 (Fed. Cir. 2005) .....	30, 32, 33

**I. STATEMENT OF RELATED CASES**

There are no related cases.

## **II. JURISDICTIONAL STATEMENT**

On April 9, 2008, the United States Patent and Trademark Office and the Board of Patent Appeals and Interferences ("Board") issued a decision in Appeal No. 2007-1590 relating to U.S. Patent Application Serial No. 09/871,349 ("the '349 Application"). The Examiner rejected Claims 1 through 5, 7 through 11, 13, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Elrod*, U.S. Patent No. 4,998,736. The Examiner rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over *Elrod*, and *Hunsberger*, U.S. Patent No. 6,279,908. The Board affirmed all rejections. Under 35 U.S.C. § 134, the Board has jurisdiction to hear this matter.

Paul J. Bryan, the Applicant in the '394 Application, on May 30, 2008, filed a timely Notice of Appeal in the United States Court of Appeals for the Federal Circuit. This court has jurisdiction to hear the present appeal under 35 U.S.C. § 144. This appeal is from a final Order that disposes of all claims.

### III. STATEMENT OF THE ISSUES

1. Whether claims 1 through 5, 7 through 11, 13, 14 and 15 of the '349 Application are unpatentable under 35 U.S.C. § 103(a) over *Elrod*, U.S. Patent No. 4,998,736.

2. Whether claim 6 of the '349 Patent is unpatentable under 35 U.S.C. § 103(a) and unpatentable over *Elrod*, and *Hunsberger*, U.S. Patent No. 6,279,908.



#### **IV. STATEMENT OF THE CASE**

On May 31, 2001 the '349 Application, entitled "Game Board and Game having a Touring Band Theme," was filed. The Examiner issued a final rejection on December 18, 2002 allowing Claims 1-10 and 15, objecting to Claim 13 and rejecting Claims 11 and 14. [A. 71-74.] Claims 11 and 14 were appealed to the Board. On May 22, 2003 a first appeal brief was filed with the Board. [A. 77-90.] Over a year later, on June 30, 2004, the Board issued its first remand, ordering the Examiner to respond to certain arguments and to consider the "printed matter" doctrine. [A. 100-104.] Approximately five months later, on November 24, 2004, the Examiner responded to the Board's remand. This time the Examiner rejected all claims, including Claims 1-11 and 13-15. [A. 105-112.] After this rejection, a second appeal brief was filed on March 28, 2005. [A. 113-138.] An oral hearing was scheduled for June 8, 2006. Days before the oral hearing, a representative of the Board canceled the oral hearing and indicated that the Board planned to remand the case for a second time. Over three years after filing the first appeal brief and over one year after filing the second appeal brief, the Board on June 29, 2006 issued its second remand. [A. 155-158.] After the second remand, the Examiner rejected all of the claims, including Claims 1-11 and 13-15. [A. 159-170.]

These rejections were reviewed by the Board. On April 9, 2008 the Board issued a decision affirming the Examiner's rejection of Claims 1-11 and 13-15. [A. 1-15.] This is an appeal from this decision of the Board.

## **V. STATEMENT OF FACTS**

### **A. The Present Invention**

The present invention discloses a game apparatus. [A. 34–57.] The apparatus includes a game board having a starting point, i.e., a parking lot, connected to an ending point, i.e., a stage, by a network of paths that wind around the game board (A. 37-38, 49.) At least one die, a plurality of tokens, a money supply, and three decks of cards are included with the game board. A first deck of cards comprises Consequence cards, a second deck of cards comprises Band Member cards, and a third deck of cards comprise Band Equipment cards. Each Consequence card includes a consequence (or requirement) for the player drawing the Consequence card. Exemplary Consequence cards are listed in the specification. [A. 41–44.] The deck of Band Member cards include a plurality of sub-groups of cards, where each sub-group of cards represents a specific band and where each card in each sub-group represents a band member of that band [A. 45.] Printed matter on the Band Member cards divides them into sub-groups and enables one sub-group and the individual cards thereof to be distinguished from the other sub-groups.

One object of the game is to arrive at the stage with a predetermined number of Band Member cards, all from the same group or band [A.45.]

Generally, each player begins with a token, five randomly selected Band Member cards, and an initial money supply [A. 46.] Each player advances from the starting point to the stage by rolling the die and moving the specified number of spaces. A player draws a Consequence card only when the player lands on one of the “Consequence” spaces scattered throughout the network of paths. [A. 46, 49.] Band Equipment card(s) may be purchased only when a player passes the “Pawn Shop” [A.47.] For example, Band Member cards are collected, traded, and/or discarded throughout the game, as described in the specification. [A. 45-47.] The Band Member cards may be acquired when a player lands on the “Rave” space and/or when directed by a Consequence card [A. 41–45.] In order to be declared a winner a player must arrive at the performing stage with a predetermined number of Band Member cards that represent one band and members of that band, and a Band Equipment card.

#### B. The Elrod Patent

*Elrod* defines the game as a “Questions and Answers Board Game.” [A. 24–33.] In the play of *Elrod*, the players begin at a designated starting point, and advance their tokens around the board, answering questions in order to accumulate money. The *Elrod* game contains two decks of cards; these decks of cards consist of Consequence cards and Questions and

Answers cards. The *Elrod* cards are utilized strictly on an individual basis. When a player draws a Consequence card, that player must comply with the dictates of the card, and then discard the card. When a player draws a Questions and Answers card, that player must announce the name of a band/artist whose first word begins with a series of designated letters of the alphabet (Name a band/artist whose first word begins with either "A," "B," or "C"). The player must write the name of the band/artist on a list, and then discard the card. If the player does not answer the question correctly, the player must pay \$5,000 to the bank. Should a player announce the name of a previously named group/artist during a turn, any opposing player can immediately challenge the error. Should a review of the Critic's List (and this is the only time players can consult the list) find a musical artist's name that has been repeated, the challenged player must pay a \$5,000 penalty. Each player begins the game with a different color playing piece or "token," which represents the player. As the players advance around the board, the players can (but are not required to) obtain figurines in the shape of musical artists. The figurines are worth \$50,000 at the conclusion of the game. The figurines are inserted into the player's token; it is the same principal as in the game of "Life," where the figurines are inserted into the different colored cars representing each player, to be sold for money at the

end of the game. In the play of *Elrod*, all players advance around the board once only. When all of the players have reached the final stage, the players sell their figurines for \$50,000 each. The player who accumulates the most money is declared the winner.

## **VI. SUMMARY OF THE ARGUMENT**

The Board found no functional relationship between the printed matter and structural elements of the claimed game apparatus. That finding is not supported by substantial evidence. As an example, one claimed element of Applicant's game apparatus is the Band Member cards. The Band Member cards are divided into groups of cards with each group representing a particular band and its members. Printed matter integrated into the Band Member cards divides them into groups. The printed matter does not simply convey information, but divides and segregates the various groups of Band Member cards. Functionally, the Band Member cards must be divided and it is the printed matter that divides them. The Band Member cards depend on the printed matter, and without the printed matter the Band Member cards are non-functional.

Claims should be construed as they are written and before applying the printed matter doctrine. That is, the printed matter itself should be

considered in a claim construction exercise. In this case, the Board excised the printed matter and then engaged in claim construction. In the case of Claim 1, for example, it calls for a deck of Consequence cards, a deck of Band member cards, and a series of Band Equipment cards. The Board in construing this claim, never construed the individual disputed claim terms, i.e. a deck of Consequence cards, a deck of Band Member cards, and a series of Band Equipment cards. Rather the Board excised any limitation having any semblance to printed matter and concluded that these terms only “mean a stack of a plurality of cards.” [A. 6,7.] Thus, the construction of these three claim terms ends up meaning “a stack of a plurality of cards.” Next, the Board found that *Elrod* discloses two decks of cards, only one of which could be properly termed Consequence cards. Nevertheless, the Board then concluded that it could divide the two decks of *Elrod* cards into as many stacks or decks as it elected in order to meet the specific deck and series of card limitations of Claim 1.

The Examiner’s arguments comparing Applicant’s claimed game apparatus to the *Elrod* game apparatus is flawed, and much of the Board’s decision is based on the Examiner’s flawed findings and the interpretation of the *Elrod* patent. The Examiner repeatedly attempts to equate Applicant’s Band Member cards and Band Equipment cards with cards in

*Elrod* that are not Band Member or Band Equipment cards. Further, the *Elrod* patent only discloses two decks of cards, but the Examiner and the Board take the position that the two decks of cards in *Elrod* can be split up and made into as many decks as desired in order to meet various deck limitations in the claimed invention. Thus, the nature and character of the claimed decks and their functionality are ignored.

## **VII. ARGUMENT**

### **A. The Applicable Standard of Review**

Obviousness under Section 103 is a legal conclusion based on underlying factual determinations. The Board's legal conclusion is reviewed *de novo*. Underlying factual determinations of the Board must be supported by substantial evidence.

Implicit in this Court's review of the Board's obviousness analysis is that the claims must have been correctly construed to define the scope and meaning of each contested limitation. *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). Claim construction is a question of law and therefore reviewed *de novo*. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967,979 (Fed. Cir. 1995) (en banc) *aff'd*, 517 U.S. 370 (1996).



**B. Claims 1-5, 7-11, 13, 14 and 15 are not Obvious Under 35 U.S.C. §103(a) as being Unpatentable Over Elrod**

**1) There is a Functional Relationship Between the Printed Matter and the Structural Components of the Game Apparatus**

Some elements of the claims involve printed matter. Claim 1 includes: (1) a deck of Consequence cards, (2) a deck of Band Member cards, and (3) a series of Band Equipment cards. Claim 11 includes the two decks of Consequence and Band Member cards. The deck of Band Member cards in Claims 1 and 11 is further limited to a deck of cards that is divided into a series of groups where each divided group designates members of a band. Claims 1 and 11 also recite a game board having a network of paths that lead to a performing stage. [A. 53-55.]

The Board's decision effectively excises the printed matter from the cards and game board and renders the claimed invention useless and nonfunctional. Indeed, the functionality of the cards and game board is inextricably tied to the printed matter appearing on the cards and game board. Take the deck of Band Member cards for example. The deck is divided into groups of cards with each group representing a band. Each divided band group is further divided into individual cards that represent individual members of that band. [A. 53.] Wipe away the printed matter and the Band Member cards do not function. The printed matter identifies the

Band Member cards and distinguishes them from the Consequence and Band Equipment cards. If the Band Member cards are not divided, the cards have no functionality. Functionally, the Band Member cards are collected, traded, and drawn. These functions cannot be performed by the Band Member cards without some means to identify the individual groups and the cards of the group. Printed matter integrated into the cards imparts this functionality.

Printed matter other than that associated with the Band Member cards imparts functionality to other structural elements of the claimed invention. Whether viewing the Consequence cards, Band Member cards or the game board, it is printed matter supported on these substrates that imparts functionality to these elements. Excising the printed matter from these structures results in functionality and usefulness being destroyed.

The Board, in affirming the Examiner's rejections, excised from the claims every limitation that had any semblance to printed matter. What was left is a nonfunctional game apparatus that bears little or no resemblance to the claimed invention. It is difficult to determine the factual basis for the Board's decision. There does not appear to be significant in-depth analysis of the functionality of the cards and game board and how the printed matter on these substrates impacts their functionality. In

addition, it is not readily apparent what factual findings the Examiner made that were endorsed by the Board or what factual findings the Board made that the Examiner did not. This is further complicated by the extensive prosecution history including the multiple remands and the difficulties that the Examiner had in complying with the Board's directives and applying the printed matter doctrine.<sup>1</sup>

One thing is clear. The Examiner after two remands, three office actions and three answers to applicant's brief, never made a finding that there was no functional relationship between the printed matter and the various substrates. As discussed below, the Board appears to have buttressed the Examiner's rejection by making conclusionary findings on factual issues. The Board's analysis does not appear to be an in-depth look at the substrates, their functionality and how the printed matter carried by the substrates impact that functionality. In the end the Board's factual findings are conclusionary and not supported by substantial evidence.

---

<sup>1</sup> Seemingly, the Board managed the Examiner and the examination of the '349 patent throughout prosecution. That may be permissible but, for the Applicant, it has been an expensive and frustrating experience. Almost seven years passed between the filing date of the '349 application and the Board's decision. Because of the remands, multiple briefs were required. The Examiner never addressed the printed matter doctrine in a clear and unambiguous way. Indeed the Examiner's approach was confusing and difficult to follow. For example, throughout the numerous office actions and the numerous answers, the Examiner in stating his §103 rejections mixed prior art with case law. For example, see the Examiner's final Answer. [A.159-170.] There the Examiner articulates the § 103 rejection as follows: "Claims 1-5, 7-11, 13, 15 rejected under 35 U.S.C. § 103(a) has been unpatentable over *Elrod* (4,998,736) in view of *ex parte Breslow*, 192 U.S.P.Q. 431 or *In re Ngai*, 67 F3d 1336 (Fed. Cir. 2004), or *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983)." [A.163.] This articulation of the rejection was not isolated. It occurred repeatedly throughout the office actions and the various answers. To further confound matters, the Examiner justifies combining legal opinion with prior art by stating: "The teachings provided by the cited court opinions are a source of motivation in the obviousness rejection." [A. 167.] The Board simply dismisses this as harmless error. [A.5.]

In the Examiner's last answer he finds: "[T]he only difference between Applicant's board game and the cited reference resides in meaning and information conveyed by the printed matter and not considered as patentable subject matter." [A.163-164.] This specific finding is repeated throughout the Examiner's supplemental third answer. [A.166-168.] The same finding is found in earlier office actions and answers. [A. 107, 110, and 145.] These repeated findings say nothing about the functional relationship between the printed matter and the substrate. To the contrary, the findings only state that the differences between Applicant's claimed invention and the prior art resides in meaning and information conveyed by the printed matter, and that is not considered patentable subject matter. That articulation of the law is error.

The Board in its second remand urged the Examiner to focus on the printed matter doctrine, and to consider the Rule 1.132 Declaration of Paul Bryan, which contains testimony concerning the functional relationship of the printed matter to the substrate. [A. 100-104, 136-138.] The Examiner attempts to address the printed matter doctrine in the context of Mr. Bryan's Declaration:

The Declaration under 37 CFR 1.132 filed 3/28/05 is insufficient to overcome the rejection of claims 1-11 and 13-15 based upon 35 USC 103(a) as set forth in the last Office action because: Examiner is allowed to interpret

“challenge, rescue or band equipment cards” as broadly and reasonably as possible. What applicant refers to as “functionality” of cards is only intended use of the indicia on cards. The indicia on Elrod cards can be used to form groups of cards and printed matter in those cards can be used for intended purpose to play a game.

[A. 167.] This does not address the printed matter doctrine, and the issue of functionality between the printed matter and the substrate. This issue has nothing to do with interpreting “challenge, rescue or band equipment cards” of the prior art as broadly and as reasonably as possible. The Examiner’s argument with respect to intended use is irrelevant.

The Board in conclusionary fashion concludes there is no functional relationship between the printed matter and the substrate. [A. 7, 8, 10, 11-13.] There is no evidence, much less substantial evidence, to support this finding. There is a functional relationship between the printed matter and various structural elements of the claimed game apparatus.

In one instance the Board considered the claim terms “Consequence”, “Band Member” and “Band Equipment.” But the Board concluded:

We consider these titles merely to identify the deck or series of cards being claimed and do not consider them to add any patentable weight to the claim (i.e., we consider these titles to do no more than if the claim recited a first deck a second deck and a third deck).

[A. 7.] These limitations are not titles. They impart functionality to the cards and identify and distinguish one deck of cards from the other. The Board failed to determine if there is a functional relationship between the printed matter that gives rise to the Consequence, Band Member and Band Equipment cards. The rejection cannot be sustained unless there is at least that finding and it is not present.

The Board moves to the deck of Band Member cards and the limitation calling for Band Member cards to be divided into a series of groups with each group of Band Member cards designating members of a band. The Board finds no functional relationship between the cards or other elements claimed and the indicia printed on the card. *Id.*

The printed matter on the deck of Band Member cards surely serves a functional relationship with the substrate. The printed matter on the Band Member cards has various functional relationships with the cards. First, the cards support the printed matter. Secondly, the printed matter enables the cards to be traded and blind drawn. Thirdly, the printed matter along with the card gives the card an individual identity which is essential for the Band Member cards to function. Furthermore, it is essential that the deck of Band Member cards be divided into a series of separate groups. There are various ways to accomplish this, and it is acknowledged that this is

accomplished by printed matter. The printed matter serves the function of dividing the deck of Band Member cards into groups, and further provides the function of identifying each group of the Band Member cards.

A Declaration submitted by Paul Bryan explains the functional relationship between some of the printed matter and the substrates claimed. [A.136-138.] The Board dismisses this Declaration as immaterial. The Board found that the printed matter on the Band Member cards:

may be functionally related to itself (i.e., the series of groups limitation), as this limitation is describing the printed matter's relation to itself and not the cards.

[A .7.] Respectfully, the Board misunderstands the function of the printed matter. The printed matter associated with the Band Member cards makes them functional.

As with other printed matter, the Board finds no functional relationship between the printed matter on the game board and the game board itself. [A.9.] The network of paths and their increments functionally connect the game board to the Consequence and Band Member cards. Numerous increments on the paths functionally relate to the Consequence and Band Member cards. For example, the Circle 3 on the game board invokes the Consequence cards. The Circle 8 on the game board states, "Band splits up – discard 3 cards." The cards being referred to are Band Member cards

138. [A.40, 49, and 50.] Thus, the printed matter on the game board functionally relates to the cards. Moreover, the printed matter on the game board functionally relates to the token and the game board as the printed matter functionally directs the token over various areas of the board. Further, the printed matter on the game board marries the Consequence and Band Member cards to the game board. Spaces 122a and 124a locate the Consequence and Band Member cards on the game board. [A.39,49.] In other words, the printed matter on the game board brings the game board and Consequence and Band Member cards together to where these elements are joined or at least engaged.

The basic premise of the printed matter doctrine is that the mere arrangement of printed matter on a surface is not considered patentable subject matter. A leading case on the printed matter doctrine is this Court's decision of *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983). In *Gulack*, the court said that the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate. This appears to be two questions: (1) is there a functional relationship between the printed matter and substrate, and (2) if so, is the functional relationship new and nonobvious? It appears that for all of the claims except Claim 6, the Board's decision mainly rests on the finding that



there is no functional relationship between the printed matter and the substrates. In any event, it appears that the central question is how to determine if the printed matter is simply an arrangement on the substrate or bears some functional relationship to the substrate.

The court in *Gulack* cautioned against the liberal use of the printed matter doctrine in rejecting claims. The court noted that the printed matter doctrine stands on questionable legal and logical footing, and that the printed matter may well constitute structural limitations upon which patentability can be predicated. *Gulack* at 1385.

*Gulack* discusses *In re Miller*, 418 F.2d 1392 (CCPA 1969), where the invention involved a measuring vessel having volumetric indicia thereon that functioned to indicate volume in a certain ratio to actual volume. The CCPA held that the volume indicia on the measuring vessel were functionally related to the measuring vessel. After discussing *Miller*, the *Gulack* court suggests that printed matter functional relationships can exist in various ways. The court stated: "A functional relationship of the precise type found by the CCPA in *Miller* – to size or to type of substrate, or conveying information about substrate – is not required". *Id.* at 1386.

The invention in *Gulack* related to a band having a plurality of individual digits imprinted on the band at spaced intervals. The band

served two functions: It supported the sequence of digits and it represented the digits as an endless sequence with no discrete beginning or end. This Court determined that there was a functional relationship between the printed matter and the substrate.

The Board contrasts the printed matter in this case with the printed matter in *Gulack* and *In re Nagi*, 67 F.3d 1336 (Fed. Cir. 2004), and found that the instant case is more akin to *Nagi*. [A.9-10.] It is difficult to discern how the Board could have reached such a conclusion. *Nagi* included a claim to a kit that included an individual instruction sheet. The court in *Nagi* held that the instruction sheet was not functionally related to the parts of the kit. Apparently in this case, the Board views the printed matter supported by the cards and the game board as instructions. They are not. Rather, the printed matter is more like the printed matter in *Gulack* as the printed matter is actually supported by the substrates. *Gulack* at 1386. In determining functional relatedness, *Nagi* employed a “dependency” test. Specifically, *Nagi* held that “the printed matter in no way depends on the kit, and the kit does not depend on the printed matter”. *Nagi* at 1339. Here that test compels a conclusion that the printed matter is related to the claimed structural elements. Here the cards, particularly the Band Member cards, and the game board depend on the printed matter on the cards and

the game board. Without the printed matter, the game board and Band Member cards are useless and cannot function. They depend on the printed matter for functionality. The printed matter is much more than an instruction sheet – it imparts functionality to the substrates.

The Board throughout its opinion repeatedly notes that the claims at issue are not method claims. By implication, at least, the Board suggests that the results might be different if the invention would have been claimed as a method. The printed matter that functions to divide the Band Member cards into groups, and then divides the groups into individual cards has nothing to do with a method. The printed matter limitations characterize the cards and game board and are not instructions for playing the game.

Finally, a game apparatus is especially suited to apply printed matter in functional relationships with structured elements of the invention. Most likely, many patented game apparati employ printed matter in one form or another on cards and game boards, and often the uniqueness of these inventions resides in the printed matter and its functional relationships to structural elements such as cards and game boards. If the Board's decision becomes law, it likely will have an impact on the patentability of games, especially those that employ game boards and multiple decks of cards.

2) The Claimed Invention is New and Nonobvious over *Elrod*.

Once the printed matter is deemed functionally related to the substrates, the claims including the printed matter are considered as a whole, as required by *Gulack*, to determine if there are novel and nonobvious differences between the claims and *Elrod*. First, Claim 1 calls for three separate decks of cards, a deck of Consequence cards, a deck of Band Member cards, and a series of Band Equipment cards. [A. 53-54.] *Elrod* includes Consequence cards, but *Elrod* does not include Band Member cards or Band Equipment cards. Certainly *Elrod* does not include a deck of Band Member cards divided into groups where each group represents a band and in each divided group the individual cards represent band members. *Elrod* has no such cards. It is true that the *Elrod* game calls for announcing the name of a band/artist whose first name begins with a designated letter of the alphabet. This is not to be confused with a deck of collectable Band Member cards that is divided into groups of cards representing bands and individual members of a band. Essentially, *Elrod* is a question and answer game, not a game apparatus having collectible Band Member cards. The claimed three separate decks of cards and the printed matter limitation incorporated into the cards, clearly distinguishes the claimed invention from any obvious teaching of *Elrod*.

Claim 11 is similar to Claim 1 except in Claim 11 there are only two decks of cards recited, the Consequence cards and the Band Member cards. [A.55.] Still the Band Member cards are defined as comprising a series of divided groups where each group represents a band and wherein the individual cards of each group represent a member of a band. That in itself is a nonobvious difference between Claim 11 and *Elrod*. It is acknowledged that the printed matter contributes to the patentability of the invention as a whole. There is, however, nothing inherently wrong with printed matter being given patentable weight so long as the first prong of the test is met, that is, there is a functional relationship between the printed matter and the underlying substrate. This Court, in *Gulack*, reinforced this legal principle:

Differences between an invention and the prior art against it cannot be ignored merely because these difference reside in the content of the printed matter. Under Section 103, the Board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole. (footnotes omitted).

*Gulack* at 1385. Indeed the *Gulack* court went further and said that printed matter may well constitute structural limitations upon which patentability can be predicated. *Id.* In this case the printed matter constitutes structural limitation in the claims.

3) The Examiner's Claim Construction Affirmed by the Board is Wrong Because the Printed Matter Limitations were Excised from the Claims Prior to the Claim Construction Analysis

The Examiner lumps three separate claim terms together – deck of Consequence cards, deck of Band Member cards, and a series of Band Equipment cards – and determines that together they all mean “a stack of a plurality of cards”. The Board affirmed this claim construction. [A. 6-7.]

The Board acknowledges that *Elrod* has only two decks of cards, but then holds:

this does not however mean that the decks of *Elrod* could not also be characterized as more than two decks (i.e., in identifying the decks of cards, the cards could be separated into numerous stacks to form multiple decks)”.

[A.7. ]

Unquestionably, Claim 1 is limited to a deck of Consequence cards, a deck of Band Member cards, and a series of Band Equipment cards. The Examiner's construction turns the recited deck of Consequence cards, deck of Band Member cards, and the series of Band Equipment cards into a single stack of a plurality of cards. This construction ignores printed matter differences between the claimed two decks of cards and the series of cards. Claimed limitations found in paragraphs (f), (g) and (h) of Claim 1 are reduced simply to “a stack of a plurality of cards.” *Id.*

The Patent and Trademark Office (PTO) can give a claim term its broadest reasonable construction. There are, however, two important caveats to this rule. First, the construction must be consistent with the specification. *In re Hyatt*, 211 F.3d 1367 (Fed. Cir. 2000). More particularly, the PTO must interpret claims in view of the specification but should not unnecessarily import limitations from the specification into the claims. *Alteris, Inc. v. Symantec Corp.*, 318 F.3d 1363 (Fed. Cir. 2003). Secondly, the claim construction must be consistent with how a person of ordinary skill in the art would construe the claim term. *In re Cortright*, 165 F.3d 1353 (Fed. Cir. 1999). The Board's construction of these claim terms is unreasonable, inconsistent with the specification, and not in harmony with how a person of ordinary skill in the art would construe the terms.

Neither the Board nor the Examiner construed a deck of Consequence cards, a deck of Band Member cards, or a series of Band Equipment cards. Rather, the construction lumped all three claim terms together and rendered one construction for all three. Importantly, it appears that the Examiner and the Board first applied the printed matter doctrine to the claims and stripped away alleged printed matter limitations, and then proceeded to construe the claims. That, as a matter of law, is incorrect. Differences between an invention and the prior art cannot be

ignored merely because those differences reside in the content of the printed matter. Under a §103 analysis, for example, the Board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. Basic principles of claim interpretation cannot be disregarded. *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983). Claim construction should be based on the claimed invention as a whole and hence, claims should be construed as presented. If the printed matter doctrine is applicable, it should only be applied to a properly construed claim. Here, the printed matter was excised from the claim before the Board engaged in claim construction.

The issue here is whether a claim is construed as presented and the printed matter doctrine applied to the properly construed claim, or is it appropriate to strip away alleged printed matter limitations and proceed with claim construction. The two constructions are likely to yield different results. The basic premise of the printed matter doctrine is that the mere arrangement of printed matter on a surface is not considered patentable subject matter. The critical question, however, is whether there exists any new and unobvious functional relationship between the printed matter and the substrate. That question should only be directed to a properly construed claim and should not be analyzed prior to claim construction or



integrated and commingled with the claim construction analysis. These are two separate steps in a patentability analysis involving alleged printed matter. After all, it is only after the claim is properly construed that it can be determined whether the printed matter is simply an arrangement on a surface or whether there is a functional relationship between the printed matter and the substrate.

This two step analysis was neither followed by the Examiner nor the Board. All indications point to the printed matter limitations being dissected from the claim prior to claim construction. At the least, claim construction and the application of the printed matter doctrine was so commingled that neither analysis can be logically followed. The entire claim construction analysis focused only on the term “deck” and not the claim terms - a deck of Consequence cards, a deck of Band Member cards, and a series of Band Equipment cards.

The Board’s patentability analysis begins by quoting portions of the Examiner’s answer. Specifically, the Board notes that the Examiner states:

Applicant’s arguments that Elrod does not provide a third deck (?) of cards are not persuasive. Elrod supplies a large number of cards (7:38-10:16) that can be divided into a large number of decks as long as each deck has plurality of cards. It may be noted that a deck only means a stack of cards.

[A.6.]

Then the Board concludes:

We agree with the Examiner's interpretation of the claim term "deck" of cards and with the Examiner's determination that the differences between the claimed elements of a game and the prior art lie in the information printed on the board and cards. Claim 1 recites "a deck of 'Consequence' cards...a deck of 'Band Member' cards, and "a series of 'Band Equipment' cards." Thus, initially we note that claim 1 does not recite three decks of cards, but two decks and one series of cards. Nonetheless, Appellant's Specification provides no definition of either term "deck" or "series" of cards. The Examiner has interpreted these terms to mean a stack of a plurality of cards.

[A.6-7.]

If Claim 1, for example, is construed without excising the alleged printed matter limitations, the construction surely distinguishes the deck of Consequence cards, the deck of Band Member cards, and the series of Band Equipment cards from each other. That is the modifying language – Consequence, Band Member, and Band Equipment – would have some significance. At a minimum a proper claim construction would specify that Claim 1 requires three separate sets of cards and that each set of cards is separate and distinguishable from the other two and performs a different function in the context of the claimed invention. Moreover, a proper construction for the deck of Band Member cards would have further provided that they contain two or more separate groups of cards with each group representing members of a band.

The Board's decision reveals that the claims were not construed prior to the application of the printed matter doctrine. That as a matter of law is error.

4) The Board's Construction is Unreasonably Broad, Inconsistent with the Specification and Inconsistent with How a Person of Ordinary Skill in the Art Would Construe the Claim Terms

The claims must be read in view of the specification, of which they are a part. The specification is always highly relevant to the claim construction analysis. Usually, it is dispositive because it is the single best guide to the meaning of a disputed term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Circ. 2005).

At no time in the claim construction exercise does the Board or the Examiner consult the specification or consider how a person of ordinary skill in the art would construe these terms. Consulting the specification and considering claim construction from the perspective of a person of ordinary skill in the art yields a different construction.

First, the specification calls for three separate decks of cards, a deck of Band Member cards 122, a deck of Consequence cards 124 and a deck of Band Equipment cards 138.<sup>2</sup> [A.41-45.] These decks of cards are

---

<sup>2</sup> In the specification and drawings, the Consequence cards 124 are sometimes referred to as "twist of fate" cards, the band member cards 122 are sometimes referred to as "on tour" cards. [A.42.]

separate sets of cards. In the drawings, the three decks 122, 124 and 138 are always shown as separate decks of cards. [A.49.] Each deck of cards has a different function. Nowhere in the specification are the decks 122, 124 and 138 commingled or simply placed in a single stack of a plurality of cards. That would destroy the functionality and usefulness of the claimed game apparatus. It would no longer perform as intended.

A construction that calls for the Consequence card, Band Member cards, and Band Equipment cards to be separate and distinct sets or collections of cards is not the result of adding extraneous limitations from the specification.

The Board's opinion strongly suggests that the printed matter appearing in the claims was ignored in construing the various "deck" terms. There is nothing in the Board's claim construction that suggests that the printed matter limitations played any role in the construction analysis. Most revealing is the ultimate construction where the Board lumps the three decks together and ends up with a construction that concludes that all of these terms "mean a stack or plurality of cards." [A.6-7.] The Board held that the Examiner's construction implicitly found that the term "deck" as used in the claims does not imply that the cards have a relationship with each other. *Id.* Clearly, if the printed matter had played any role in this

claim construction, the Examiner's construction could not have been so broad because in essence the construction ignores the printed matter limitations and the printed matter limitations have absolutely no impact on the construction.

The claims themselves reveal that the Board's construction of these three decks of cards is incorrect. The context of the surrounding words of the claims must be considered in determining what the individual claim terms mean. *Phillips* at 1314. Claim 1, for example, in three separate paragraphs calls out two separate decks of cards and a separate series of cards. Claim 11 calls out two separate decks of cards and defines each set. Simply viewing these terms in the context of the surrounding words of the claims shows that the Board's construction is incorrect. A construction that lumps all three decks or sets of cards together and simply concludes that they mean a stack of a plurality of cards ignores the claim language and the specification. Again, it is recognized that the Patent Office can give a claim term its broadest reasonable construction consistent with the specification and how a person of ordinary skill in the art would construe the term. In this case however, the Board's construction is unreasonably broad and inconsistent with the specification.

For the same reasons, a person of ordinary skill in the art would not construe the terms as simply meaning a stack of a plurality of cards. The person of ordinary skill is deemed to read the claim term not only in the context of the claim but in the context of the entire patent including the specification. *Phillips* at 1313. The construction rendered by the Board would not be in harmony with how a person of ordinary skill in the art would construe these terms in light of the claims and the specification.

5) The Examiner's Arguments are Flawed and the Board's Decision is Unsupported and Based On the Examiner's Flawed Arguments

In the Examiner's Answer, it states:

Examiner takes the position that the 35 USC 103(a) rejections of claims 1-11, 13-15 over Elrod in light of the printed matter doctrine are appropriate. The only difference between applicant's game (cards, game path) and Elrod game (cards, game path) resides in meaning and information conveyed by the printed matter and would not be patentable difference. For example Elrod cards (col. 8, lines 7-34) asking the name of a band/artist can be interpreted as applicant's "band member card" or "band equipment" card. The examiner takes the position that the term "artist" on the Elrod cards can be read as "band member" and the term "band" can be read as "band equipment." These differences in the printed matter are only in meaning and information conveyed and not in the game. The teachings provided by the cited court opinions are source of motivations in the obvious rejection.

[A.167.] The Examiner's argument is flawed for many reasons. First, the difference in meaning and information conveyed by the printed matter on Applicant's Band Member cards creates a fundamental difference between

the two games, and distinguishes Applicant's card and game apparatus from *Elrod's* cards and game apparatus. Second, the term "artist" and the term "band" are on the same *Elrod* card. This will tie into the Board's argument about dividing the *Elrod* cards into multiple stacks or decks of cards. Third, the Examiner is not properly interpreting what *Elrod* meant. The Examiner cannot interpret the word "band" to mean "band equipment," because it is not what *Elrod* meant. In *Elrod's* disclosures it states:

Each band/artist may be named once only. Should a player announce a previously named group/artist during a turn, any opposing player can immediately challenge the error.

[A.31.] Because *Elrod* substitutes the word "group" for the word "band" in the claims, it is clear that *Elrod* meant for the term "band" to mean "group" (The Beatles, Rolling Stones, etc...) and not "band equipment" as the Examiner argues. The Examiner also changes the function of the cards. *Elrod* cards are Questions and Answers cards, and were never intended to be collectable cards. *Elrod* set forth strict guidelines that no player shall repeat the name of a band/artist, this would lead one to believe that *Elrod* never intended for the cards to be matched or collected.

In the Examiner's Answer, it states:

Applicant's argument that the examiner misconstrued is not persuasive. *Elrod* clearly teaches groups of band member cards (8:7-34) dividing in groups by letters A through Z.

[A.169.] The Examiner has misconstrued what *Elrod* meant involving *Elrod* cards. Letters A through Z do not refer to the grouping of the cards. The following are the first few *Elrod* cards as they appear in its claim:

Two cards – “NAME A BAND/ARTIST WHOSE FIRST WORD  
BEGINS WITH EITHER ‘A’, ‘B’, OR ‘C’ PAY \$5,000 TO THE BANK”

Two cards – “NAME A BAND/ARTIST WHOSE FIRST WORD  
BEGINS WITH EITHER ‘D’, ‘E’, OR ‘F’ PAY \$5,000 TO THE BANK”

Two cards – “NAME A BAND/ARTIST WHOSE FIRST WORD  
BEGINS WITH EITHER ‘G’, ‘H’, OR ‘I’ PAY 5,000 TO THE BANK”

[A.30.] The *Elrod* cards pose a question and the letters A through Z refer to the limitation of the answer, not to the grouping of the cards. The Examiner has misconstrued the grouping of the *Elrod* cards, has misinterpreted what *Elrod* meant by the wording on the cards, and has mutilated *Elrod*’s cards by changing the function of the cards.

In the Examiner’s Answer, it states: “Further in the absence of structural differences the limitation “grouping of cards” is being interpreted as a rule of playing.” [A. 169.] *Elrod*’s game apparatus and Applicant’s game apparatus are two different types. The first sentence of *Elrod*’s patent states “(54) METHOD OF PLAYING A QUESTIONS AND ANSWERS BOARD GAME.” [A.24.] It is clear that *Elrod* is defining the type of game apparatus. There is a fundamental structural difference between *Elrod*’s game apparatus and the Applicant’s game apparatus. *Elrod*’s game apparatus is a Questions and Answers board game, and Applicant’s game



apparatus is designed around a plurality of predetermined groups of collectable Band Member cards. *Elrod* does not teach or suggest collectable cards, and applicant's game apparatus does not teach or suggest Questions and Answers cards. *Elrod's* game apparatus and Applicant's game apparatus are two fundamentally different types. Applicant's game apparatus is absent in *Elrod*. *Elrod* does not teach or suggest any structure containing a plurality of predetermined collectable Band Member cards that is functionally related to the elements of the game apparatus. When the rules of playing are completely removed, the Applicant's game, and the structure of the plurality of groups of collectable Band Member cards remains unchanged; therefore, the structure of the grouping of cards cannot be interpreted as a rule of playing. Because the structure of the plurality of groups of collectable Band Member cards are completely absent from the teachings of the prior art, it must be new and unobvious. For this reason alone, the Examiner's rejection must be reversed.

There is a much more complicated issue revolving around the meaning and information conveyed by the printed matter on the *Elrod* cards, as mentioned earlier. In Applicant's game the Band Member cards are drawn, discarded, traded between players, and blind drawn from a

player's hand. Each Band Member card may be passed around thirty to one hundred times or more. The Band Member cards will always keep the same identity, because the relationship between the printed matter and the card gives the card an individual identity. The printed matter on the *Elrod* cards only conveys information to the player, in the form of a question. The printed matter does not convey any meaning or importance to the card itself. The printed matter appears on two of the *Elrod* cards, thus it is impossible for the printed matter to convey an individual identity to each *Elrod* card. In Applicant's game apparatus, the printed matter on the Band Member cards conveys importance to the card itself, giving the card an individual identity, and also dividing the cards into a plurality of predetermined groups of collectable Band Member cards. The meaning and information conveyed by the printed matter conveys importance to the card itself in contrast to *Elrod's* game. The printed matter on the cards in *Elrod's* game conveys no importance to the card; instead the printed matter conveys information to the player. This fundamental difference distinguishes Applicant's game apparatus from *Elrod's* game apparatus. *Elrod* cards are Questions and Answers cards and may only be interpreted as cards which ask a question and demand an answer. For this reason alone, the Examiner's rejection must be reversed.

*Hunsberger* is a questions and answers board game designed to educate people about Diabetes. [A.58.] In the Examiner's Answer, it states:

Elrod does not teach color-coding for distinguishing proper category. *Hunsberger* teaches color-coding cards (Fig. 1) for distinguishing. In order to correspond to a proper card, the art area of board games recognizes color-coding cards to correspond to a space on the board.

[A.165.] The color-coded cards in *Hunsberger* correspond to a space on the board, in the same way that a Consequence Card corresponds to a space on the board in many other games. Such practice is common and known in the art. In Applicant's game apparatus, the color-coding does not correspond to spaces on the board, instead the color-coding divides the collectable Band Member cards into a plurality of predetermined groups. IN the Board's Decision, it states:

Here the Examiner has found that it is well known in board games, as evidenced by *Hunsberger*, to color code cards used in the game. To combine such color-coding with Elrod's game would yield the predictable result of facilitating grouping of the cards.

[A.14.] Even though it is well known that color-coding is a common way of facilitating the grouping of cards, this statement is unsupported. When *Elrod* and *Hunsberger* are combined, the only result is color-coded Questions and Answers cards. It is irrelevant what color a question is printed on, it will not change the question. When the color-coding of *Hunsberger* is combined with *Elrod*, it will not result in an apparatus

revolving around a plurality of collectable Band Member cards that is functionally related to the elements of the game apparatus. *Hunsberger* does not teach, or suggest collectable cards. The issue is not if color-coding is common practice, but whether or not the apparatus revolving around the plurality of predetermined groups of Band Member cards is new and unobvious. Neither *Elrod* nor *Hunsberger* teach or suggest collectable cards, and even if *Elrod* and *Hunsberger* are combined, there is still no suggestion of a grouping of collectable Band Member cards. Because the structure of Applicant's game apparatus is completely absent from *Elrod* and *Hunsberger*, even when they are combined together, the Applicant's game apparatus must be new and obvious and cannot be anticipated by *Elrod* and/or *Hunsberger*. For this reason alone, the Board's decision must be reversed.

In the Board's Decision, it states:

While we agree that *Elrod* identifies that the game includes two decks, this does not however mean that the Decks of *Elrod* could not also be characterized as more than two decks (i.e., in identifying the decks of cards, the cards could be separated out into numerous stacks to form multiple decks.)

[A.7.] This will tie into the second reason why the Examiner's argument is flawed, which was mentioned earlier. It is completely irrelevant how many decks the Board divides the *Elrod* cards into because the Board would still

not have one single collectable card in any deck. *Elrod* does not teach, or suggest any collectable cards. *Elrod* only contains Consequence cards and Questions and Answers cards. These cards are non-functional descriptive material and have no value as collectable cards. The *Elrod* cards also have the term “band/artist” both appearing on the same card. [A.30.] These are the cards that the Examiner claims the term “band” can be read as “band equipment,” (even though *Elrod* meant for it to mean “group”) and “artist can be read as “band member.” In Applicant’s game apparatus Band Equipment cards and Band Member cards have two different functions and could not possibly be on the same card. This would mean that the *Elrod* cards could not be separated out into separate decks of collectable cards to achieve to objective of having one deck of Band member cards with one function, and a separate deck of Band Equipment cards with a completely different function. It would be impossible to separate the printed matter “band/artist” into two different decks of cards, with two different functions, without mutilating the *Elrod* cards.

In the Board’s Decision, it states:

On the issue of obviousness, the Supreme Court has recently stated that “the obviousness analysis cannot be confined by a formalistic conception of the words, teaching, suggestion, and motivation. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than

yield predictable results. *Id.* at 1739. Here the Examiner has found that it well known in board games, as evidenced by Hunsberger, to color code cards used in the game. To combine such color-coding with Elrod's game would yield the predictable result of facilitating grouping of the cards.

[A.14.] When the color-coding of *Hunsberger* is combined with *Elrod's* game apparatus, it will not yield the result of collectable cards. If the back of the *Elrod* cards are color-coded, the result will yield Questions and Answers cards which will correspond to a space on the game board, as *Hunsberger* already teaches. If the printed matter on the face of the *Elrod* cards is color-coded, the result will yield questions asked in different colors of print. It is irrelevant what color print a question is asked in, it will not change the question, nor will it change the nature of a Questions and Answers card.

The elements of Applicant's game apparatus, combined with the design of the game board, are engineered to create a functioning apparatus. This apparatus revolves around the structure of the plurality of collectable Band Member cards, and together with the other elements of the game apparatus, create the conception of a "mob like" atmosphere between players. The players will instinctively gang up on the player that seems to be winning at any given moment. It is the interaction between the elements of the game apparatus and the design of the pathways that

create the "mob like" atmosphere. This causes the status of each player to change dramatically, very quickly. This also creates an ever-changing hostile environment where a player must chose to play "offence" or "defense," by choosing the pathway that facilitates his strategies. The apparatus which creates a "Mob Like" atmosphere in Applicant's game apparatus, is completely absent from *Elrod's* teachings, and suggestions, even when combined with *Hunsberger*.

Because the Board's arguments are unsupported, and based on the Examiner's flawed arguments, the Board's Decision and the Examiner's rejection of claims 1-11 and 13-15 must be reversed.

I am not able to explain every aspect of the functionality of the elements of Applicant's game without an oral hearing. I hereby request an oral hearing, to fully explain the functional relationship between all of the elements of Applicant's game and game board, which will distinguish Applicant's game from *Elrod* and/or *Hunsberger*.

### **VIII. Conclusion**

For the above reasons, the Board's entire decision should be reversed and all pending claims patentable.

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 7<sup>th</sup> day of October, 2008, I served an original and eleven copies of the foregoing **APPELLANT'S BRIEF** to the Clerk of Court for the United States Court of Appeals for the Federal Circuit via Federal Express addressed as follows:

Ms. Jan Horbaly  
Clerk of Court  
US Court of Appeals for the Federal Circuit  
717 Madison Place, N.W.  
Washington D. C. 20439

Further, I hereby certify that on this the 7<sup>th</sup> day of October, 2008, I served two copies of the foregoing **APPELLANT'S BRIEF** to opposing counsel via Federal Express addressed as follows:

Stephen Walsh  
Office of the Solicitor, USPTO  
Madison West Bldg., 8C43A  
600 Dulany Street  
Arlington, VA 22214

  
Paul J. Bryan



## FORM 19. Certificate of Compliance With Rule 32(a)

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) or FRAP 28.1(e).

- ☒ The brief contains [ 8,937 ] words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), or
- ☐ The brief uses a monospaced typeface and contains [                      ] lines of text, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) or FRAP 28.1(e) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

- ☐ The brief has been prepared in a proportionally spaced typeface using [ state name and version of word processing program ] in [ Arial, 14 point ], or
- ☒ The brief has been prepared in a monospaced typeface using [ Microsoft Office Word 2003 ] with [ Arial, 14 point ].

(s) Paul J. Bryan

Paul J. Bryan

(Name of Attorney)

Representing himself, the Appellant

(State whether representing appellant, appellee, etc.)

10/7/08

(Date)

## **ADDENDUM**

---



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,349	05/31/2001	Paul J. Bryan	4822-001	9565

24112 7590 04/09/2008  
COATS & BENNETT, PLLC  
1400 Crescent Green, Suite 300  
Cary, NC 27518

EXAMINER
----------

MENDIRATTA, VISHU K

ART UNIT	PAPER NUMBER
----------	--------------

3711

MAIL DATE	DELIVERY MODE
-----------	---------------

04/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* PAUL J. BRYAN

---

Appeal 2007-1590  
Application 09/871,349  
Technology Center 3700

---

Decided: April 9, 2008

---

Before JENNIFER D. BAHR, ROBERT E. NAPPI, and DAVID B. WALKER  
*Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 1 through 11, and 13 through 15. Claim 12 has been cancelled. We affirm the Examiner's decision.

---

## INVENTION

The invention is directed to a board game which has a game board, tokens, dice and cards. See page 2 of Appellant's Specification. Claim 1 is representative of the invention and reproduced below:

1. A game board and game, comprising:
  - (a) a game board having a starting area, a network of irregular paths that lead from the starting area; and a central performing stage located generally centrally on the game board and connected to at least one segment of the network of paths;
  - (b) the network of paths including a series of segments wherein each segment is broken down into increments and wherein at least some of the increments include indicia formed thereon that dictate an action for landing on a particular increment;
  - (c) a series of tokens provided with the game board wherein a token may be assigned to one player and during the course of a game the token is advanced along one or more of the segments of the network of paths;
  - (d) at least one die that is used to determine the number of increments that a player's token can be advanced during the course of the game;
  - (e) a supply of money that during the course of the game is distributed to the players;
  - (f) a deck of "Consequence" cards that are keyed to certain increments on the network of paths, each "Consequence" card having indicia thereon that sets forth a consequence and wherein a player landing on an increment that calls for drawing a consequence card must comply with the directive set forth on the drawn consequence card;
  - (g) a deck of "Band Member" cards with the deck being divided into a series of groups with each group of "Band Member" cards designating members of a band;
  - (h) a series of "Band Equipment" cards with each card designating band equipment; and
  - (i) wherein the object of the game is for each player to advance his or her token along the network of paths and reaches the central stage with a predetermined number of one group of "Band Member" cards and a "Band Equipment" card.

## REFERENCES

Elrod	US 4,998,736	Mar. 12, 1991
Hunsberger	US 6,279,908 B1	Aug. 28, 2001

## REJECTIONS AT ISSUE

Claims 1 through 5, 7 through 11, 13, 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elrod.<sup>1</sup> The Examiner's rejection is set forth on pages 5 through 7 of the Answer; the rejection of claim 14 is on pages 7 and 8 of the Answer.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Elrod and Hunsberger.<sup>2</sup> The Examiner's rejection is set forth on page 7 of the Answer.

Throughout the opinion, we make reference to the Brief (received March 28, 2005), Reply Brief (received August 15, 2005) and the Answer (mailed August 1, 2006) for the respective details thereof.

## ISSUES

---

<sup>1</sup> We note that the Examiner's statement of the rejection also identifies *Ex. Parte Breslow*, *In re Ngai*, and *In re Gulack* as prior art applied in the rejection. As these cases are not relied upon to present evidence of knowledge in the art, we have not recited them in the statement of the rejection. It appears that the Examiner is confused about how to identify case law. These cases provide guidance as to how non functional descriptive material is to be considered during Examination.

<sup>2</sup> See note 1.

A) Whether Appellant has shown that the Examiner erred in rejecting claims 1 through 5, 7 through 11, 13, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Elrod. We note that Appellant's arguments, on pages 5 through 17 of the Brief, separately address claims 1, 11, and 14. Thus in accordance with 37 C.F.R. § 41.37(c)(1)(vii), we select claim 1 to be representative of the group of claims 1 through 5, 7 through 10 and 15, we select claim 11 to be representative of the group of claims 11 and 13, and we consider claim 14 alone.<sup>3</sup>

B) Whether Appellant has shown that the Examiner erred in rejecting claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Elrod and Hunsberger.

#### PRINCIPLES OF LAW

Office personnel must rely on Appellant's disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, (emphasis in original) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989)).

---

<sup>3</sup> We note that on page 6 of the Reply Brief, Appellant state that the claims were argued in 5 groups, and that the Examiner did not respond to each of these groups. We disagree with this statement as a) Appellant did not separately argue claim 13 in accordance with 37 C.F.R. § 41.37(c)(1)(vii); thus claim 13 is grouped with claim 11 and there are four (4) groups; and b) the Examiner did address each of the four groups on pages 5 through 7 of the Answer.

However, the Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1583-84, (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, (Fed. Cir. 2004) and our recent final decision in *Ex parte Curry*, 2005-0509 (BPAI 2007), 84 USPQ2d 1272 (Affirmed, Rule 36, Fed. Cir., slip op. 06-1003, June 2006).

### ANALYSIS

*Claims 1 through 5, 7 through 10 and 15.*

Appellant's arguments have not persuaded us that the Examiner erred in rejecting claims 1 through 5, 7 through 10 and 15. On page 6 of the Brief, Appellant argues that the Examiner's rejection is in error as it combines legal authority with prior art and as such the rejection should be reversed. This argument has not persuaded us of reversible error by the Examiner. We agree with Appellant that including citations to case law in the statement of the rejection is unusual. However, we disagree with Appellant's assertion that this constitutes reversible error. Appellant has cited no legal authority to support that such an action by the Examiner constitutes reversible error. Further, it is clear from the record that the Examiner used these cases as guidance for considering non functional descriptive material. As discussed *infra*, we consider these cases to be relevant to the analysis of the Appellant's claims. Thus, Appellant's arguments concerning the citation of case law in the statement of the rejection have not persuaded us of error.

On page 6 of the Brief and pages 4 and 5 of the Reply Brief, Appellant argues that the Examiner's rejection of claim 1 is in error as "Claim 1 Includes a



Third Deck of Band Equipment Cards Not Found in Elrod and Not Even Addressed By the Examiner.” Appellant argues on pages 6 and 7 of the Brief, that claim 1 calls for three decks of cards, and the Examiner’s rejection only addressed two decks of cards. Further, on pages 7 and 8 of the Brief and 4 through 6 of the Reply Brief, Appellant argues that the Examiner misconstrued the “Band Member” cards by failing to give patentable weight to the recitation that the band member cards are a series of groups with each group of “Band Member” cards designating members of a band.

In response, the Examiner states on page 9 of the Answer, that “[t]he only difference between appellant’s game (cards, game path) and Elrod[’s] game (cards, game path) resides in [the] meaning and information conveyed by the printed matter and would not be [a] patentable difference.” Further, on page 10 of the Answer, the Examiner states:

Applicant’s arguments that Elrod does not provide a third deck (?) of cards are not persuasive. Elrod supplies a large number of cards (7:38-10:16) that can be divided into a large number of decks as long as each deck has plurality of cards. It may be noted that a deck only means a stack of cards.

We agree with the Examiner’s interpretation of the claim term “deck” of cards and with the Examiner’s determination that the differences between the claimed elements of a game and the prior art lie in the information printed on the board and cards. Claim 1 recites “a deck of ‘Consequence’ cards ... a deck of ‘Band Member’ cards,” and “a series of ‘Band Equipment’ cards.” Thus, initially we note that claim 1 does not recite three decks of cards, but two decks and one series of cards. Nonetheless, Appellant’s Specification provides no definition of either term “deck” or “series” of cards. The Examiner has interpreted these terms

to mean a stack of a plurality of cards.<sup>4</sup> Appellant has not challenged this by providing an alternative meaning of the term, but rather has asserted that Elrod only teaches two decks. While we agree that Elrod identifies that the game includes two decks, this does not however mean that the Decks of Elrod could not also be characterized as more than two decks (i.e., in identifying the decks of cards, the cards could be separated out into numerous stacks to form multiple decks). We note that the claim identifies the two decks and one series by identifiers (titles) in quotes, e.g. "Consequence," "Band Member" and "Band Equipment." We consider these titles merely to identify the deck or series of cards being claimed and do not consider them to add any patentable weight to the claim (i.e., we consider these titles to do no more than if the claim recited a first deck a second deck and a third deck).

Claim 1 further identifies that deck of "Band Member" cards as being "divided into a series of groups with each group of 'Band Member' cards designating members of a band." This limitation is a description of the indicia printed on the card. We find no claimed or functional relationship between the card or other elements claimed and the indicia printed on the card. As such, we consider the limitations identifying the information printed on the Band Member card to be directed to non functional descriptive material, and as such not to differentiate the claim from the prior art. Contrary to Appellant's assertion in paragraph 8 of Paul Bryan's March 24, 2005 Declaration, it is immaterial that the information on the card may be functionally related to itself (i.e., the series of groups limitation), as this limitation is describing the printed matter's relation to itself and not the card. Further, the claim recites no limitations directed to what the

---

<sup>4</sup> In so finding the Examiner has implicitly found that the term "deck" does not imply that the cards have a relationship with each other.

series of groups represents, any group of symbols can be ordered into a series of groups. Further, it is of no consequence that the information on the card may be functionally related to the method of playing the game, as claim 1 is an apparatus claim and recites no functional method steps of playing the game which functionally use the indicia.

Claim 1 also recited "a series of 'Band Equipment' cards with each card designating band equipment." Similar to the limitation directed to "Band Member" cards, this limitation merely recites a description of the indicia printed on the card. We find no functional relationship between the card or other elements of the claim and the indicia printed on the card.

We find that Elrod teaches that there is a plurality of cards used in the game. Elrod identifies that the cards may be divided into two decks (sets) titled, "Challenge" and "Rescue." Within the set of cards titled "Challenge" there are groups of cards characterized as "Self Challenge" cards, "Challenge an Opponent" cards and other cards. See col. 8, ll. 34-col. 10, ll. 16, col. 11. ll. 50. Within the set of cards titled "Rescue" there are groups of cards characterized as "Rescue Me" cards, "Block A" cards, and "Name A" cards. Any of these groups of cards can be considered a deck of cards. That they contain different indicia than the claimed "Band Equipment" and "Band Member" cards does not distinguish the claimed invention from Elrod. As discussed above, these differences lie in the matter printed on the card and do not functionally relate to the cards, and as such will not distinguish the claimed cards from those in the prior art. Thus, Appellant's arguments have not persuaded us that the Examiner erred in finding that Elrod teaches three decks or erred in failing to give patentable weight to the recitation of "Band Equipment" and "Band Member" cards.

Further, we are not persuaded by Appellant's arguments on pages 9 through 11 of the Brief that the Examiner erred in not considering the limitations directed to the paths on the board. Claim 1 recites a game board having a starting area, and a central stage with a network or irregular paths leading from one location to the other. The claim further recites that the paths include segments that are broken into increments which include indicia that dictate action when landing on the indicia. Appellant's Specification does not identify the details of the board's construction; however, as known in the art, the board in board games is made of a flat material that has indicia printed thereon and the board provides support for game pieces. We consider the indicia, identifying the starting area, central stage, and the paths (including the segments, and increments with directions to be followed when landing on the increment) to be non-functional descriptive material or printed matter. As identified *supra* non-functional descriptive material will not differentiate a claimed invention from the prior art. Appellant argues, on pages 9 and 10 of the Brief and paragraph 7 of Paul Bryan's March 24, 2005 Declaration that the paths functionally relate to the game board as they define a path that the player tokens move during the game. However, we disagree. Initially, we note that claim 1 is an apparatus claim, not a method claim. We do not find that the indicia functionally relates to the board or the other elements of the claim. In *In re Gulack*, the court found that the indicia on Gulack's band related to the endless nature of Gulack's band. *In re Gulack*, 703 F.2d. 1381, 1386-87 (Fed. Cir. 1983). We find no such interrelationship between Appellant's board and the indicia on the board. Rather, we find that the nature of the information printed on the board to be more akin to the sheet of instructions discussed in *In re Ngai*, where the court held that "the printed matter [the instruction sheet] in no way depends upon the kit, and the kit does not depend upon the printed matter." *In re Ngai*, 367 F.3d at 1339.

Here, the indicia printed on the board in no way relates to the other elements of the claim (the tokens, the die, the money, the cards); rather, the board merely provides guidance (instructions) as to how the elements are to be used together when the game is played. Thus, we agree with the Examiner that the claimed features of the board constitute non functional descriptive material.

As the paths on the board represent non functional descriptive material, the limitations directed to these paths will not distinguish the claimed game board from the game board in Elrod. Nonetheless, even if the limitations were considered to be functional, we find that Elrod teaches the claimed starting area, central stage, and the paths including the segments, and increments with directions to be followed when landing on the increment. Elrod teaches a starting area; see increment 1 in figure 1. Elrod teaches several "stages", "Stage 1," "Stage 2" ... "Stage 5", and "Final Stage." See figure 1. Elrod teaches a segmented path broken up into increments numbers 2-118. Note this path represents several paths to the final stage, as the token may traverse from increment 13 to 25 by crossing "Stage 1" or by traversing increments 14-24. There are similar paths associated with the other numbered stages, and there is the path made up of increments 50a-55a. See figure 1. Elrod teaches that the increments of the paths have instructions to be followed when a token lands on them. Col. 1, ll. 8-9.

For the above reasons, Appellant's arguments have not persuaded us of error in the Examiner's rejection of independent claim 1. As claims 2 through 5, 7 through 10 and 15 are grouped with claim 1, we sustain the Examiner's rejection of claims 1 through 5, 7 through 10 and 15.

*Claims 11 and 13.*

Appellant argues on pages 11 and 13 of the Brief that the Examiner's rejection is in error as the Examiner gave no patentable weight to the limitations directed to the "Band Member" cards. Appellant asserts that the Examiner did not apply the printed matter doctrine to claim 11.

Appellant's arguments have not persuaded us of error in the Examiner's rejection. Initially, we note the Examiner identified, on page 9 of the Answer, that the difference between the claimed invention cards, game path and the prior art resides in the meaning on the information on the cards. Thus, the Examiner did rely upon the printed matter doctrine in interpreting claim 11 and applying art to claim 11.

Claim 11 recites "A game board and game comprising: ... a second deck of cards ... the second deck of cards are "Band Member" cards and include a plurality of groups of cards with each group of cards representing a band and the members of the band." Similar, to the "Band Member" card limitation of claim 1, this limitation of claim 11 is a description of the indicia printed on the card. We find no claimed or functional relationship between the card or other elements claimed and the indicia printed on the card. As such, we consider the limitations directed to the information printed on the Band Member card to be directed to non functional descriptive material, and as such not to differentiate the claim from the prior art. As discussed above with respect to claim 1, Elrod teaches a game which makes use of at least two decks of cards. Accordingly, Appellant's arguments have not persuaded us of error in the rejection of claim 11. As claim 13 is grouped with claim 11, we sustain the Examiner's rejection of claims 11 and 13.

*Claim 14.*

On page 15 of the Brief, Appellant argues that the Examiner's rejection of claim 14 is in error. Appellant asserts that the Examiner erred in characterizing the limitations directed to the paths on the board as aesthetic. Further, on pages 16 and 17 of the Brief, Appellant asserts that the Examiner correctly did not apply the printed matter doctrine to claim 14, as there is a functional relationship between the paths on the board and the board. Further, Appellant argues, on page 17 of the Brief, that the Examiner offered no evidence to support the finding that it would have been obvious to modify Elrod to change the configuration of the playing path.

Appellant's arguments have not persuaded us of error in the Examiner's rejection. Initially, we note that in the statement of the rejection of claim 14, on page 8 of the Answer, the Examiner states: "The only difference between applicant's board game and the cited reference resides in the meaning and information conveyed by the printed matter and not considered as patentable subject matter." The Examiner goes on to find that the paths on the board are aesthetic in nature (as opposed to functional in nature). Thus, contrary to Appellant's assertion, the Examiner has applied the printed matter doctrine to claim 14. Claim 14 is dependent upon the board game of claim 11 and further recites that the network of paths includes an outer path, an intermediate path, a curved path, and a series of feeder paths. As discussed above, it is known in the art that the board in board games is made of a flat material that has indicia printed thereon it and the board provides support for game pieces. We consider the indicia identifying the paths to be non-functional descriptive material or printed matter. As discussed *supra*, non functional descriptive material will not differentiate a claimed invention from the prior art. Appellant argues, on page 16 of the Brief and in paragraph 7 of Paul Bryan's March 24, 2005, Declaration, that the paths functionally relate to the game board as they define a path that the player tokens

move during the game. We disagree with Appellant's assertion; claim 11 is an apparatus claim, not a method claim. As discussed above with respect to claim 1, the indicia printed on the board in no way relates to the other elements of the claim (the cards); rather, the board merely provides guidance (instructions) as to how the elements are to be used together when the game is played. Thus, we agree with the Examiner that the claimed features of the board constitute non-functional descriptive material.

As the paths on the board represent non-functional descriptive material, the limitations directed to these paths will not distinguish the claimed game board from the game board in Elrod. Accordingly, Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 14.

#### *Claim 6*

Appellant argues on page 13 of the Brief that the Rejection of claim 6 is in error for the reasons discussed with respect to claim 1. On page 14 of the Brief, Appellant argues that the Examiner's motivation, to apply the commonly used technique of color coding cards, taught by Hunsberger, to the cards of Elrod, is inconsistent with the claim language and how Elrod would have to be modified to meet the claim.

With respect to claim 6, the Examiner states on page 11 of the Answer, "that the only difference between the applicant's cards and Elrod [sic, Elrod's] cards resides in the meaning and information conveyed by the printed matter and open to interpretation."

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 6. Claim 6 is dependent upon claim 1 and further recites that the "Band Member' cards are color coded such that each group may be distinguished



by color.” As discussed with respect to claim 1, we consider the indicia printed on the “Band Member” cards to be non-functional descriptive material. That the indicia printed on the cards may be color coded does not make the indicia functional as it does not create a non obvious relationship between the card and the indicia. As the indicia are not functionally related to the cards, the limitations directed to the indicia will not differentiate the claimed cards from the cards in the game of Elrod.

Further, even if the limitations were considered functional, Appellant’s arguments directed to the motivation to combine the references are not persuasive of error, as they assert a strict application of the motivation to combine test. On the issue of obviousness, the Supreme Court has recently stated that “the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 1739. Here the Examiner has found that it is well known in board games, as evidenced by Hunsberger, to color code cards used in the game. To combine such color-coding with Elrod’s game would yield the predictable result of facilitating grouping of the cards.

For the forging reasons, Appellant’s arguments have not persuaded us of error in the Examiner’s rejection of claim 6.

#### DECISION

Appeal 2007-1590  
Application 09/871,349


The Examiner's decision to reject claims 1 through 11, and 13 through 15 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

KIS

COATS & BENNETT, PLLC  
1400 Crescent Green, Suite 300  
Cary, NC 27518

<b><i>Index of Claims</i></b> 	<b>Application/Control No.</b> 11261386	<b>Applicant(s)/Patent Under Reexamination</b> LANGE ET AL.
	<b>Examiner</b> George, Tara R	<b>Art Unit</b> 3733

✓	<b>Rejected</b>	-	<b>Cancelled</b>	N	<b>Non-Elected</b>	A	<b>Appeal</b>
=	<b>Allowed</b>	÷	<b>Restricted</b>	I	<b>Interference</b>	O	<b>Objected</b>

<input type="checkbox"/> Claims renumbered in the same order as presented by applicant					<input type="checkbox"/> CPA		<input type="checkbox"/> T.D.		<input type="checkbox"/> R.1.47	
CLAIM		DATE								
Final	Original	08/01/2007	02/03/2008	07/20/2008						
	1	✓	✓	✓						
	2	✓	✓	✓						
	3	✓	✓	✓						
	4	✓	✓	✓						
	5	✓	✓	✓						
	6	✓	✓	✓						
	7	✓	✓	✓						
	8	✓	✓	✓						
	9	✓	✓	✓						
	10	✓	✓	✓						
	11	✓	✓	✓						
	12	✓	✓	✓						
	13	✓	✓	✓						
	14	✓	✓	✓						
	15	✓	✓	✓						
	16	✓	✓	✓						
	17	✓	✓	✓						
	18	✓	✓	✓						
	19	✓	✓	✓						
	20	✓	✓	✓						
	21	✓	✓	✓						
	22		✓	-						
	23		✓	-						
	24		✓	-						

[54] METHOD OF PLAYING A QUESTION AND ANSWER BOARD GAME

[76] Inventor: R. Brent Elrod, 2020 Tenth St.  
North, St. Petersburg, Fla. 33704

[21] Appl. No.: 556,832

[22] Filed: Jul. 23, 1990

Related U.S. Application Data

[63] Continuation of Ser. No. 399,306, Aug. 28, 1989.

[51] Int. Cl.<sup>5</sup> ..... A63F 3/00

[52] U.S. Cl. .... 273/249; 273/290;  
273/256

[58] Field of Search ..... 273/249-254,  
273/243, 256, 290

[56] References Cited

U.S. PATENT DOCUMENTS

4,029,320	6/1977	Hausman	273/249
4,109,918	8/1978	Mele et al.	273/256
4,121,823	10/1978	McBride	273/249
4,787,639	11/1988	Ross	273/249

FOREIGN PATENT DOCUMENTS

1120642	7/1968	United Kingdom	273/256
1187977	4/1970	United Kingdom	273/256
2198361	6/1988	United Kingdom	273/249

OTHER PUBLICATIONS

"Trivial Pursuit", Master Game—Rules of Play, Selchow & Righter Co., 1981, Found in Group 330 Search Room.

"Play It Again Jukebox", Games Magazine, Feb. 1986, p. 48, Found in Group 330 Search Room.

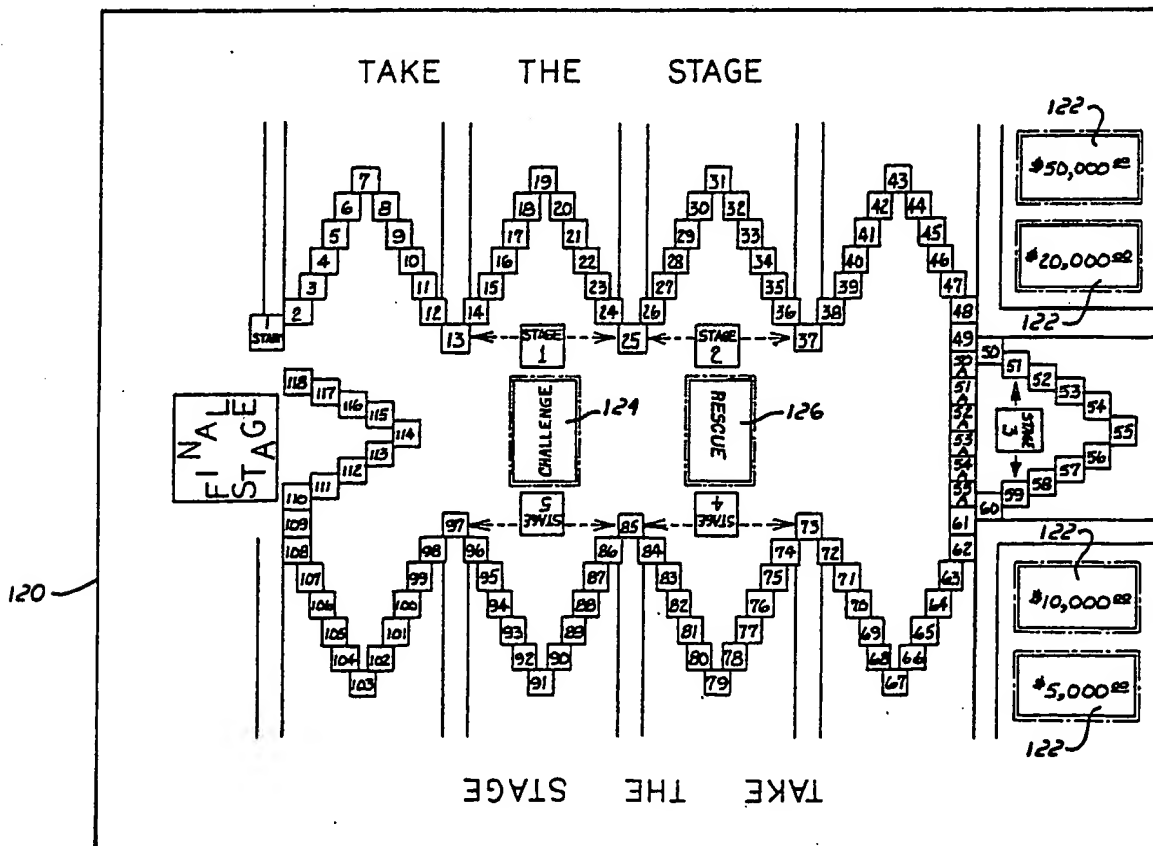
Primary Examiner—Benjamin Layno

Attorney, Agent, or Firm—Herbert W. Larson

[57] ABSTRACT

The game contains a board with multiple spaces on which a concert platform playing piece moves for each player from a start box to a final stage. Each space contains instructions which may include selecting a rescue or challenge card. The rescue cards provide a means for escaping precarious predicaments and the challenge cards may ask questions which if answered correctly provides a bonus and if answered incorrectly a monetary penalty. A pair of dice determines the number of spaces moved during each player's turn. Each player can obtain band members to be inserted on their playing piece. Such band members are worth \$50,000 each at the conclusion of the game when each player arrives at the final stage. The player who accumulates the most money is declared the winner.

5 Claims, 2 Drawing Sheets



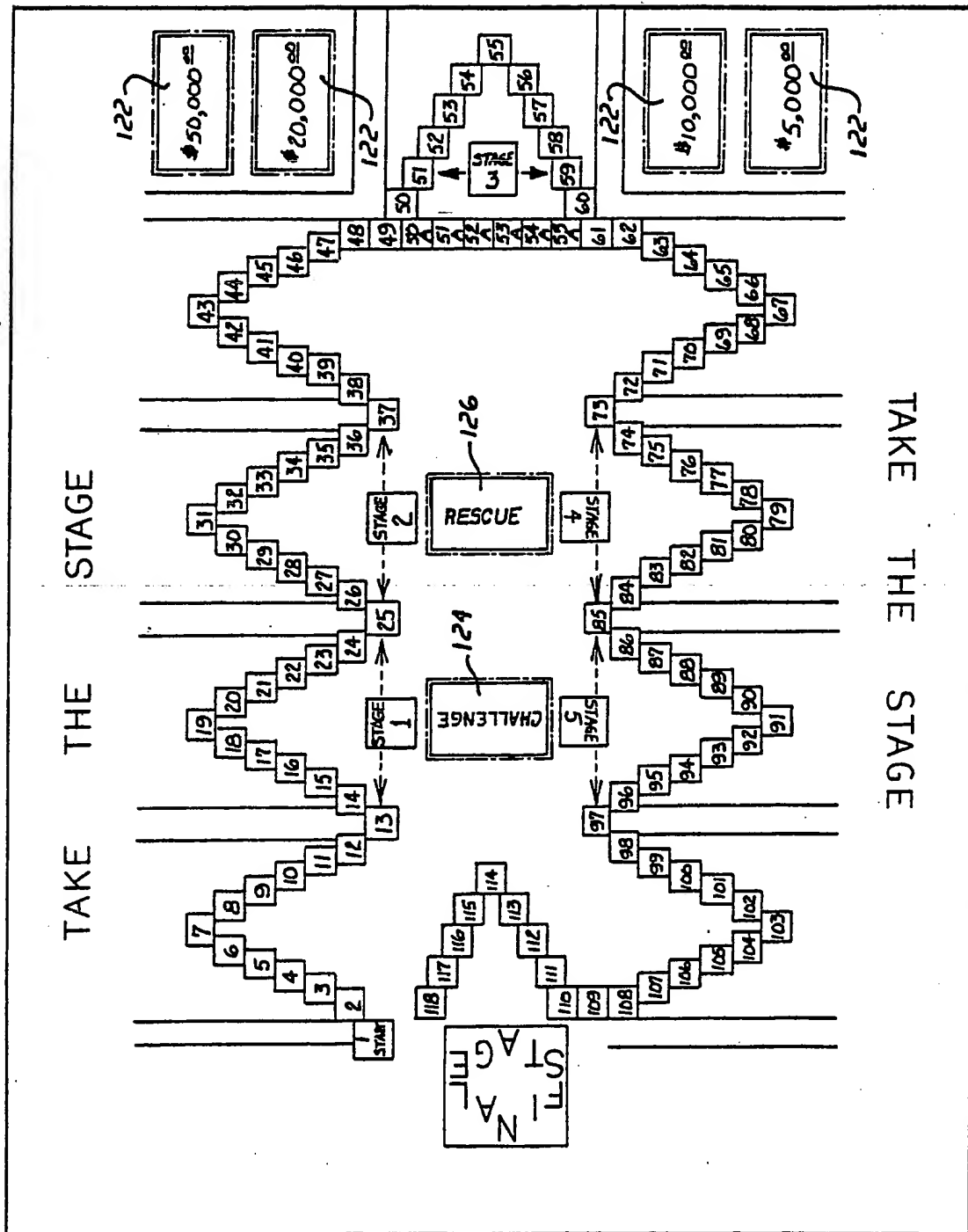


FIG. 1

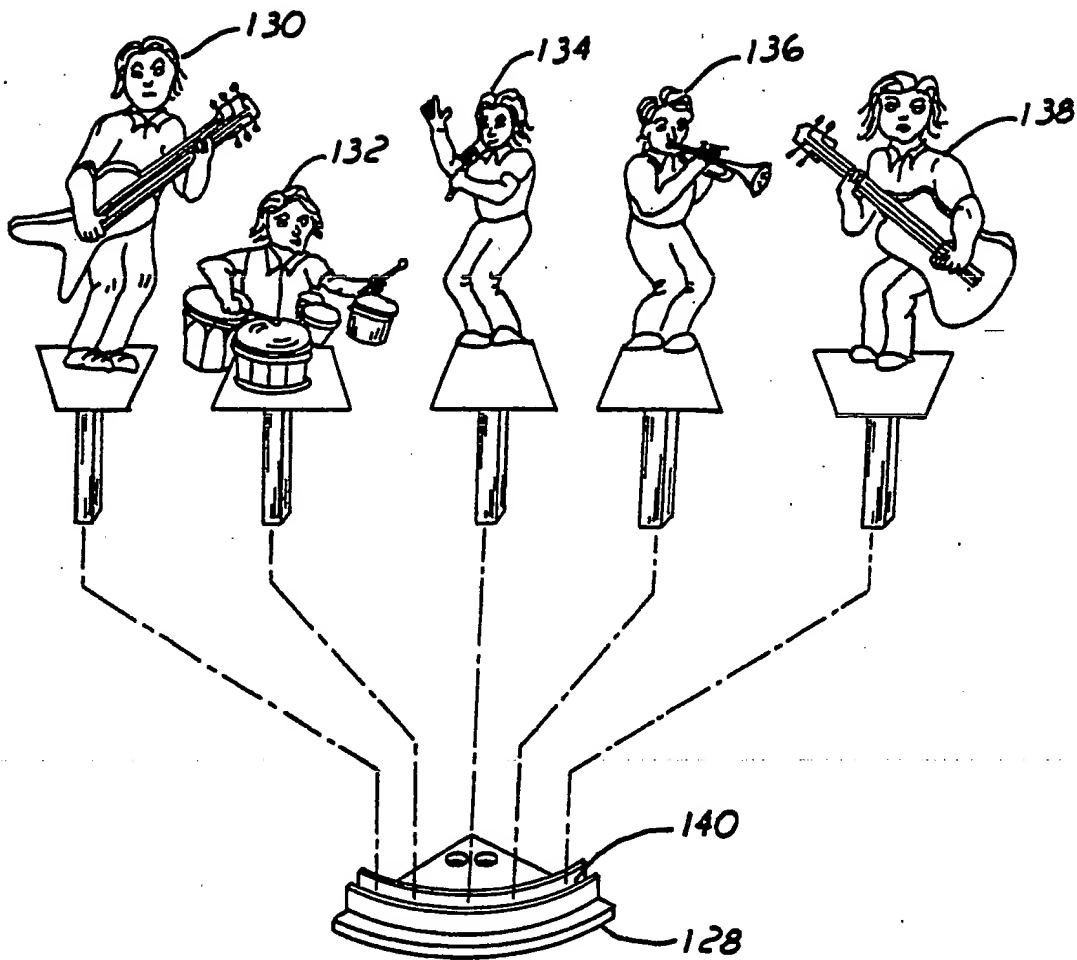


FIG. 2

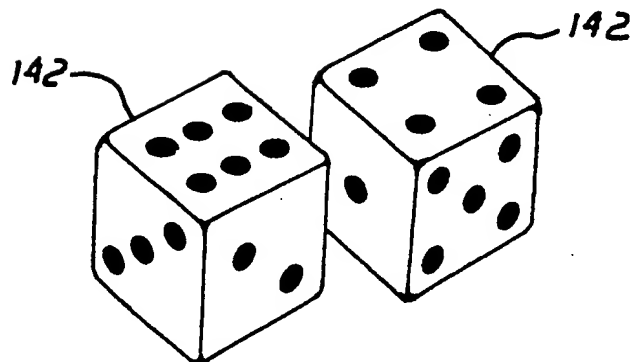


FIG. 3

## METHOD OF PLAYING A QUESTION AND ANSWER BOARD GAME

Prior Applications. This application is a continuation of my application Ser. No. 07/399,306, filed Aug. 28, 1989.

### BACKGROUND OF THE INVENTION

#### 1. Field of the Invention

This invention relates to board games. More particularly, it refers to a competitive game of chance in which pieces move onto spaces of a board and each space describes an action to be taken.

#### 2. Description of the Prior Art

Board games of various types in the prior art have provided entertainment for players. These board games have a great diversity from real estate sales games such as MONOPOLY to war games such as RISK. Board games continue to be of interest to the public and new games are frequently met with enthusiastic response. For this reason, many new board games reach the market place each year.

### SUMMARY OF THE INVENTION

I have developed a novel board game having one hundred and eighteen enclosed spaces on the board forming a contiguous path around the board from a start box to a "final stage". Five intermediate "stage" boxes are interspersed among the enclosed spaces. Each enclosed space contains instructions concerning the action to be taken by the player whose piece lands on the space. A throw of a pair of dice determines the moves of a player piece.

Six concert platforms of different colors are used as moving pieces by up to six players. Fifty challenge cards and fifty rescue cards are used as the tactics of the game requires or when directed by instructions on a space landed upon by a player piece. A supply of playing money is provided each player. Thirty-five band members are available for insertion into the concert platform playing pieces. No more than five different players can be placed on a single platform.

The object of the game is to become the headline act on the final stage by moving through the various spaces on the board and by recalling and announcing names of musical artists. By movement of the concert platform pieces, adding band members and performing concerts money can be accumulated. Each player selects a different colored concert platform and two band members to start the game. Play continues until all players' pieces reach the final stage. At the final stage, band members are returned to the board at a value of fifty-thousand dollars each. The player who has accumulated the most cash is declared the winner.

### BRIEF DESCRIPTION OF THE DRAWINGS

The invention may be best understood by those having ordinary skill in the art by reference to the following detailed description when considered in conjunction with the accompanying drawings in which:

FIG. 1 is a plan view of the board employed in the game.

FIG. 2 is a front elevation view of a player moving piece and the five band members.

FIG. 3 is a perspective view of the conventional dice used to move the player pieces.

## DETAILED DESCRIPTION OF THE INVENTION

Throughout the following detailed description, the same reference numerals refer to the same elements in all figures.

The board 120 shown in FIG. 1 has playing spaces 1 to 118 including alternate route 50A-55A. The spaces contain directions for play of the game as follows:

1. START
2. ADVERTISE FOR BAND MEMBERS. PAY \$5000
3. BUY FRONT ROW SEATS FOR AN UPCOMING CONCERT. PAY \$5000
4. HOST A PRECONCERT PARTY. PAY \$5000
5. PURCHASE A NEW STEREO SYSTEM. PAY \$5000
6. WIN A CONCERT PACKAGE FROM THE LOCAL RADIO STATION. COLLECT \$5000
7. AUDITION BASS PLAYERS FOR THE GROUP. ADD ANY PIECE
8. GET STUCK IN CONCERT TRAFFIC. LOSE A TURN
9. BUY A NEW GUITAR. PAY \$5000
10. SCHEDULE REHEARSALS. ADD ANY PIECE
11. AN OLD FRIEND JOINS THE BAND. ADD ANY PIECE
12. THE BAND MUST OVERCOME MANY OBSTACLES. DRAW A CHALLENGE CARD
13. INVEST IN A SPANDEX WARDROBE. PAY \$10,000
14. ENTER A LOCAL TALENT SHOW - AND WIN! COLLECT \$10,000
15. THE LEAD SINGER FROM ANOTHER GROUP JOINS YOURS. FROM ANY OPPONENT, TAKE ANY PIECE
16. PRACTICE MAKES PERFECT. DRAW A CHALLENGE CARD
17. ADVANCE TO STAGE #1. SING A PORTION OF A SONG BY THE NAMED ARTIST
18. WIN A RADIO SPONSORED RECORDING SESSION. COLLECT \$25,000
19. REHEARSALS ARE A BUST. RETURN A PIECE
20. AUDITION DRUMMERS FOR THE GROUP. ADD ANY PIECE
21. THE BAND BUYS NEW RECORDING EQUIPMENT. PAY \$10,000
22. THE BAND LANDS ITS FIRST GIG! COLLECT \$10,000
23. BOOS AND HISSES GREET THE BANDS FIRST PERFORMANCE. DRAW A RESCUE CARD
24. THE GROUP NEEDS POLISHING. ADD ANY PIECE
25. A LOCAL BUSINESS HIRES THE BAND TO COMPOSE MUSIC FOR A JINGLE. COLLECT \$5000
26. THE LEAD SINGER AGREES TO TRY BACKUP VOCALS. GO BACK THREE SPACES
27. ADVANCE TO STAGE #2. NAME A SONG BY THE NAMED ARTIST
28. THE BAND TRIES A DIFFERENT LOOK. ADD ANY PIECE
29. UPGRADE YOUR SOUND SYSTEM. PAY \$10,000

30. WIN A BATTLE OF THE BANDS COMPETITION. DRAW A CHALLENGE CARD
31. THE BAND BECOMES A FIXTURE ON THE LOCAL CLUB SCENE. COLLECT \$10,000
32. YOUR SUCCESS IS OFTEN AT ANOTHER'S EXPENSE. FROM ANY OPPONENT. TAKE \$10,000
33. THE BAND RECORDS A DEMO TAPE. PAY \$5000
34. THE BAND ATTRACTS AN ANONYMOUS SUPPORTER. COLLECT \$10,000
35. THE BAND PERFORMS ITS JINGLE AT A LOCAL SALES EVENT. COLLECT \$5000
36. PURCHASE A VAN TO HAUL YOUR EQUIPMENT. PAY \$25,000
37. EQUIPMENT PROBLEMS ARISE AT A CLUB SHOW. LOSE A TURN
38. RETURN TO STAGE #2. SING A PORTION OF A SONG BY THE NAMED ARTIST
39. THE BAND PLAYS ITS FIRST REGIONAL DATE! COLLECT \$25,000
40. FANS RUSH THE STAGE. TO HIRE ADDITIONAL SECURITY, PAY \$10,000
41. THE BAND DECIDES TO TRY A BIGGER LINEUP. ADD ANY PIECE
42. A SINGLE FROM YOUR DEMO RECEIVES LOCAL AIRPLAY. DRAW A CHALLENGE CARD
43. YOUR DRUMMER IS KNOCKED SENSELESS BY A FLYING COWBELL. RETURN A PIECE
44. DEMAND FOR THE GROUP RUNS HIGH. COLLECT \$25,000
45. COMPETITION FOR QUALITY BAND MEMBERS IS INTENSE. FROM ANY OPPONENT, TAKE ANY PIECE
46. THE BAND RELEASES ITS FIRST SINGLE! COLLECT \$50,000
47. ADVANCE TO STAGE #3. SING A PORTION OF A SONG BY THE NAMED ARTIST
48. SHORE UP THE BAND' WEAK SPOTS. ADD TWO PIECES
49. HIRE A MANAGER TO PROMOTE THE GROUP. PAY \$10,000
50. PERFORM AT A CHARITY EVENT. DRAW A CHALLENGE CARD.
- 50A. RECORD A HOME VIDEO FOR USE IN PROMOTING THE BAND. PAY \$5000
- 51A. YOUR MANAGER ORDERS A NEW LOOK: COSTUMES! PAY \$10,000
- 52A. LOCAL AIRPLAY OF YOUR SINGLE GENERATES MAJOR LABEL INTEREST. COLLECT \$25,000
- 53A. YOUR SINGLE DISAPPEARS FROM THE RADIO. SO DO YOU . . . LOSE A TURN
- 54A YOUR RECORD LABEL REJECTS THE ARTWORK FOR YOUR ALBUM COVER. DRAW A RESCUE CARD 55A. FAN MAIL IS OVERWHELMING. ASSISTANTS ARE HIRED TO ANSWER IT ALL. PAY \$20,000
51. NEW MEMBERS GENERATE NEW EXCITEMENT. GO FORWARD THREE SPACES
52. AN EXTENDED TOUR OF REGIONAL CLUBS IS WELL RECEIVED. COLLECT \$25,000
53. YOUR BIGGEST FANS HOST A FUND RAISING PARTY. COLLECT \$5000

54. AN INDEPENDENT LABEL SIGNS YOU TO A RECORDING CONTRACTS! COLLECT \$50,000
55. EQUIPMENT IS STOLEN BACKSTAGE. TO REPLACE IT, PAY \$25,000
56. A LOCAL CONCERT CRITIC GIVES THE BAND A TERRIBLE REVIEW. DRAW A RESCUE CARD
57. STUDIO PLAYERS ARE NEEDED FOR A RECORDING SESSION. ADD TWO PIECES
58. A MANAGER CHANGE BENEFITS THE GROUP. COLLECT \$5000
59. THE GROUP IS FAST BECOMING THE CRITICS' FAVORITE. ROLL AGAIN
60. YOU ARE HIRED TO TOUR THE COUNTRY AS AN OPENING ACT! COLLECT \$50,000
61. RETURN TO STAGE #3. NAME A SONG BY THE NAMED ARTIST
62. THE BAND IS CITED FOR VIOLATING A CITY NOISE ORDINANCE. PAY \$5000
63. THE BAND TAKES OUT A BANK LOAN TO OFFSET A SLUMP IN BOOKINGS. COLLECT \$25,000
64. COLLABORATE WITH OTHER SUPERSTARS ON A BENEFIT ALBUM. DRAW A CHALLENGE CARD
65. THE BASS PLAYER TAKES OFF ONE TOO MANY ARTICLES OF CLOTHING. TO POST BOND, PAY \$10,000
66. THE BAND STEALS THE SHOW AS THE OPENING ACT. FROM EACH OPPONENT, TAKE \$5000
67. YOUR DRUMMER WANTS THE SONGS HE WROTE TO GO ON THE NEXT ALBUM. RETURN A PIECE
68. THE MUSIC LACKS SPARK. ADD ANY PIECE
69. THE DRUMMER IS DATING A HAIRSTYLIST. PERMS ARE FREE! DRAW A RESCUE CARD
70. YOUR ALBUM SPAWNS A HIT! COLLECT \$50,000
71. THE BAND UPHOLDS ITS REPUTATION FOR DESTROYING HOTEL ROOMS. FOR REPAIRS, PAY \$20,000
72. ADVANCE TO STAGE #4. SING A PORTION OF A SONG BY THE NAMED ARTIST
73. PLAY YOUR HOMETOWN ARENA. BUY TICKETS FOR EVERYONE YOU KNOW. PAY \$5000
74. AN OUTDOOR SHOW IS RAINED OUT. LOSE A TURN
75. SIGN AUTOGRAPHS AT A RECORD STORE. COLLECT \$5000
76. HIRE AN ACCOUNTANT TO KEEP THE BOOKS. PAY \$10,000
77. A MAJOR RECORD LABEL SIGNS YOU TO AN EXTENDED CONTRACT. COLLECT \$100,000
78. THE BAND IS ACCUSED OF STEALING A SONG, BAD PUBLICITY RESULTS. TO CLEAR YOUR NAME, PAY \$50,000
79. YOUR MANAGER SENSES YOU ARE PLANNING TO FIRE HIM. HE VANISHES WITH TOUR PROCEEDS. PAY \$50,000
80. A POSTER OF THE BAND IS PRINTED. COLLECT \$50,000



81. YOUR SECOND ALBUM ENTERS THE CHARTS WITH A BULLET! ADD ANY PIECE
82. YOUR MANAGER IS CONVINCED THE BAND SHOULD DO A COMMERCIAL ... GO BACK THREE SPACES
83. THE BAND PRODUCES ITS FIRST VIDEO. PAY \$50,000
84. THE BAND SELLS OUT AND DOES A BEER COMMERCIAL. COLLECT \$50,000
85. ADVANCE TO STAGE #5. NAME TWO OF THE NAMED ARTISTS' SONGS
86. THE BAND BUYS ITS OWN TOUR BUS. PAY \$50,000
87. YOUR ALBUM GOES GOLD!!! COLLECT \$100,000
88. YOUR SINGLE GOES TO NUMBER ONE!!! COLLECT \$100,000
89. THE DRUMMER FALLS OFF THE STAGE AND BREAKS HIS ARM. RETURN A PIECE
90. THE BAND IS PROMOTED TO HEADLINE STATUS !!! COLLECT \$50,000
91. THE BAND IS NOMINATED FOR A GRAMMY AWARD! COLLECT \$50,000
92. YOUR VIDEO MOVES INTO HEAVY ROTATION! COLLECT \$100,000
93. THE ROAD CREW STRIKES FOR HIGHER WAGES. TO GET THEM BACK TO WORK, PAY \$50,000
94. YOUR VIDEO IS PLAYED ONLY WHEN NO ONE IS WATCHING ... LOSE A TURN
95. THE GROUPS' SECOND ALBUM IS A DUD. RETURN A PIECE
96. THE BAND MAKES THE COVER OF ROLLING STONE! COLLECT \$100,000
97. YOUR DRUMMER IS ELECTROCUTED IN A FREAK, BACKSTAGE ACCIDENT. RETURN A PIECE
98. HIRE A LAWYER TO SUE YOUR EX-MANAGER. PAY \$50,000
99. RETURN TO STAGE #5. SING A PORTION OF A SONG BY THE NAMED ARTIST
100. THE BAND SPLITS UP TO PURSUE SOLO CAREERS. RETURN ALL BUT ONE PIECE AND GO FORWARD THREE SPACES
101. RETURN TO YOUR ROOTS. PLAY A FREE CONCERT FOR YOUR HOMETOWN FANS. DRAW A RESCUE CARD
102. YOUR DRUMMER ENTERS DRUG AND ALCOHOL REHABILITATION. RETURN A PIECE
103. YOUR NEW SOLO CAREER IS WELL RECEIVED. COLLECT \$50,000
104. HOST THE VIDEO MUSIC AWARDS. COLLECT \$25,000
105. PRODUCTION COSTS GO WAY OVER BUDGET. PAY \$50,000
106. YOUR DRUMMER DESTROYS A DRUMSET ON STAGE. FOR A NEW SET, PAY \$10,000
107. THE BAND CONTRIBUTES A SONG TO A MOVIE SOUNDTRACK. COLLECT \$100,000
108. TURN IN ANY COMBINATION OF RESCUE AND CHALLENGE CARDS TOTALING THREE. COLLECT \$100,000
109. EX-MEMBERS OF THE BAND ARE WELCOMED BACK FOR A REUNION TOUR. ADD TWO PIECES
110. THE BAND WINS A GRAMMY AWARD! COLLECT \$150,000

111. RENOUNCE YOUR WEALTH AND MOVE TO NEPAL. PAY \$100,000
112. WIN "BEST VIDEO" AT THE MUSIC AWARDS!!! COLLECT \$100,000
113. TOUR OVERSEAS! COLLECT \$100,000
114. AN OBSCURE "B-SIDE" OF A SINGLE BECOMES AN UNEXPECTED HIT! COLLECT \$50,000
115. NEW SYNTHESIZER EQUIPMENT MAKES YOUR DRUMMER OBSOLETE. RETURN A PIECE
116. YOUR STADIUM CONCERT TOUR IS A SELL-OUT!! COLLECT \$200,000
117. UH, OH! THE OPENING ACT STOLE YOUR SHOW. TO GET RID OF THEM, PAY \$50,000
118. YOUR ALBUM IS CERTIFIED PLATINUM!!!!!! COLLECT \$250,000

Play money 122 in denominations of \$5,000.00, \$10,000.00, \$20,000.00 and \$50,000.00 is used in the game. At the start of the game, a Banker is designated by the players and the money 122 is distributed by him/her. The Banker places a \$20,000.00 on each Stage space and gives each player three \$20,000.00, two \$10,000.00 and four \$5,000.00 bills. The Banker also deals three Challenge cards 124 and two Rescue cards 126 from stacks containing fifty challenge 124 and Rescue cards 126.

At the start of the game, each player selects a different colored concert platform 128 to act as his moving piece. Out of a pool of thirty-five band members 130, 132, 134, 136 and 138, each player selects two to form a band. The players are inserted into a curved slot 140 located in the concert platform 128.

Each player rolls one die 142 with the highest roller going first and the player to his or her left following so that play continues among the players in a clockwise rotation.

The object of the game is for one player to become the Headline Act on the Final Stage. This is achieved by amassing the most amount of money at the time the player reaches the Final Stage space on the board 120. During the game, players move their concert platforms clockwise over the spaces 1-118 by naming musical artists, adding band members, exercising turn options and following the board's instructions.

Play continues until all competitors reach the Final Stage. An exact roll of the dice is not needed to reach this space. After a player has reached the Final Stage, all other players roll out until they too have reached this space. Board instructions are followed but players are no longer required to name musical artists nor allowed to play Challenge 124 and Rescue 126 cards. Once all players are on the Final Stage, band member pieces are returned to the Bank. Players collect \$50,000 for each piece exchanged. All players then total their cash to determine the winner.

The player with the most money is declared the Headline Act!!! Second place is dubbed the Opening Act. Third place is granted a Backstage Pass. Fourth place is seated on the Front Row. Fifth place is hired to take tickets. Sixth or last is relegated to the Road Crew and must break down the Stage and store it away!

The first step of any turn is to state the name of a musical artist aloud. After successfully completing this requirement, a player then:

- (a) rolls the dice 142 and moves the concert platform 128 the corresponding number of spaces and performs as the board directs (should the board direct

- the player to draw a Challenge 124 or Rescue 126 card, the players' turn is automatically ended);
- (b) plays either one Challenge 124 or one Rescue 126 card (unless a Rescue 126 card was submitted to name a musical artist to begin the turn);
- (c) draws either one Challenge 124 or one Rescue 126 card to conclude the turn.

Moves (a) and (c) are mandatory requirements of a turn. Move (c) would be included in move (a) if the board directed the player to draw a Challenge 124 or Rescue 126 card. Move (b) is optional. Doubles do NOT roll again.

High roller begins the game by naming a band or musical artist whose first word begins with the letter 'A' (Example: "Aardvark"). Should the player be unable to announce a musical artist beginning with 'A', the player must submit a Rescue 126 card from his/her hand to aid in naming an alternative musical artist. Allow sixty seconds for the initial response and an additional sixty seconds should a Rescue 126 card be played. The game will flow smoothly when time constraints are enforced. After successfully naming a musical artist, Player 1 then exercises his moves (a), (b) and (c).

Subsequent players begin their turns by naming a band/artist whose first word begins with the last letter of the band previously named. (Example: Player 2 would take the 'K' from "Aardvark" and possibly name "Kay Smith". Player 3 would later use the 'H' from "Kay Smith" and name a musical artist whose first word begins with 'H'; and so on.) If a player is unable to name a band/artist within a reasonable time, the player must exercise a Rescue 126 card to assist in doing so.

When a Rescue card is submitted to aid in naming an alternative band/artist, the next player shall use the last letter of that musical artists' name to begin the next turn.

After naming a band/artist, the player then exercises the turn options (a), (b) and (c) set forth above.

The fifty Rescue 126 cards have the following content:

- Six cards—"STAGE FRIGHT"
- Two cards—"RESCUE ME FROM LOSING A BAND MEMBER ADD A BAND MEMBER"
- One card—"RESCUE ME FROM MY EXPENSES COLLECT \$10,000"
- Two cards—"RESCUE ME FROM TIME TAKE AN ADDITIONAL SIXTY SECONDS"
- One card—"RESCUE ME FROM A SMALL BANK ACCOUNT COLLECT \$20,000"
- Two cards—"RESCUE ME FROM TOO MANY CARDS TURN IN THIS AND ANY TWO OTHERS COLLECT \$25,000"
- One card—"RESCUE ME FROM CREDITORS COLLECT \$5000"
- Two cards—"RESCUE ME FROM MY BOARD MOVE DO NOT HEED THE BOARD'S REQUEST"
- Two cards—"BLOCK A 'TAKE A RESCUE'"
- Two cards—"BLOCK A 'LOSE A TURN' CARD"
- Two cards—"BLOCK A 'TAKE A CHALLENGE'"
- Four cards—"CRITICS CHOICE"
- One card—"NAME A COUNTRY ARTIST PAY \$5000 TO THE BANK"
- One card—"NAME A REGGAE ARTIST PAY \$5000 TO THE BANK"
- One card—"NAME A JAZZ OR A NEW AGE ARTIST PAY \$5000 TO THE BANK"
- One card—"NAME A SOLO ARTIST PAY \$5000 TO THE BANK"

- One card—"NAME A DUET PAY \$5000 TO THE BANK"
- One card—"NAME A TRIO PAY \$5000 TO THE BANK"
- 5 One card—"NAME A CLASSICAL ARTIST PAY \$5000 TO THE BANK"
- Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'A', 'B', OR 'C' PAY \$5000 TO THE BANK"
- 10 Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'D', 'E', OR 'F' PAY \$5000 TO THE BANK"
- Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'G', 'H', OR 'I' PAY \$5000 TO THE BANK"
- 15 Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'J', 'K', OR 'L' PAY \$5000 TO THE BANK"
- Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'M', 'N', OR 'O' PAY \$5000 TO THE BANK"
- 20 Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'P', 'Q', OR 'R' PAY \$5000 TO THE BANK"
- 25 Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'S', 'T', OR 'U' PAY \$5000 TO THE BANK"
- Two cards—"NAME A BAND/ARTIST WHOSE FIRST WORD BEGINS WITH EITHER 'V', 'W', 'X', 'Y', OR 'Z' PAY \$5000 TO THE BANK"
- The fifty challenge 124 cards have the following content:
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'A', 'B', AND/OR 'C' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO THE BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'D', 'E', AND/OR 'F' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'G', 'H' AND/OR 'I' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'J', 'K', AND/OR 'L' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'M', 'N', AND/OR 'O' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'P', 'Q', AND/OR 'R' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'S', 'T', AND/OR 'U' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"

- One card—"SELF-CHALLENGE NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'V', 'W', 'X', 'Y', AND/OR 'Z' TAKE \$10,000 FROM BANK IF SUCCESSFUL PAY \$10,000 TO BANK IF UNSUCCESSFUL"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'A', 'B', AND/OR 'C' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'D', 'E', AND/OR 'F' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'G', 'H', AND/OR 'I' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'J', 'K', AND/OR 'L' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'M', 'N', AND/OR 'O' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'P', 'Q', AND/OR 'R' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'S', 'T', AND/OR 'U' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- One card—"CHALLENGE AN OPPONENT TO NAME THREE ADDITIONAL ARTISTS USING THE LETTERS 'V', 'W', 'X', 'Y', 'Z' BOTH TAKE \$10,000 FROM BANK IF SUCCESSFUL IF UNSUCCESSFUL, OPPONENT PAYS BANK \$10,000"
- Two cards—"LOSE A TURN"
- One card—"FROM ANY OPPONENT, TAKE \$5000"
- One card—"FROM ANY OPPONENT, TAKE \$10,000"
- Two cards—"MOVE AN OPPONENT BACK THREE SPACES"
- Two cards—"MOVE AN OPPONENT THREE ADDITIONAL SPACES"
- Two cards—"MOVE YOURSELF THREE ADDITIONAL SPACES"
- Four cards—"BATTLE OF THE BANDS"
- Two cards—"TAKE AN OPPONENTS' RESCUE CARD"

- Two cards—"TAKE AN OPPONENTS' CHALLENGE CARD"
- Two cards—"TAKE AN OPPONENTS' BAND MEMBER"
- 5 Three cards—"TAKE THE STAGE NAME FIVE STYLES OF MUSIC (EACH CAN BE NAMED ONCE ONLY)"
- Three cards—"TAKE THE STAGE SING A PORTION OF A SONG BY THE NAMED ARTIST"
- 10 Three cards—"TAKE THE STAGE NAME A SONG BY THE BAND/ARTIST"
- Two cards—"TAKE THE STAGE NAME A MEMBER OF THE GROUP"
- Three cards—"TAKE THE STAGE NAME OR SING A PORTION OF A CURRENT TOP TWENTY SONG"
- The guidelines that follow apply some restrictions to the naming of musical artists. All players should familiarize themselves with these restrictions.
- 20 Select a Critic to record a written list of all bands and artists whose names are used during play. All types of musical artists can be called upon in a game unless otherwise restricted prior to the onset of play. In other words, a player could name a current pop star in one round, a classical or country artist in the next, and so on. Individual players can not keep separate lists.
- 25 Should a player fail to successfully name a group/artist within a reasonable time, nor successfully submit a Rescue card, the player is immediately disqualified from further play. Each band/artist may be named once only. It is acceptable to name both a musical group and its individual members.
- 30 Should a player announce a previously named group/artist during a turn, any opposing player can immediately challenge the error. No challenge card is needed. Should a review of the Critic's List (and this is the only time players may consult the list) find a musical artist's name has been repeated, the challenged player must pay a \$5000 penalty. This money is placed on the Final Stage for the player reaching that space first to collect.
- 35 Should the challenge prove unwarranted, the challenging player must pay a \$5000 penalty to the Final Stage. The challenged player must then name an alternative band/artist to continue their turn.
- 40 Many band names end in the letter 'S'. When this occurs in normal rotation, the next player shall start their turn by naming a musical artist whose first word begins with the letter preceding the 'S'. In other words, drop the 'S' and use the "new" last letter. (Example: "Anteaters" would be classified as "Anteater" and the letter 'R' used by the next player.)
- 45 Should an individual artist's name end in the letter 'S' (Example: "Johnny Jones"), the 'S' shall be used by the next player.
- 50 Players shall not use the words "the", "band" and "group" to begin or end artists' names during the game. (Example: "The Bud Smith Band" would be classified as "Bud Smith" and the letter 'H' used by the next player.)
- 55 Potential opportunities abound during the game for players to earn bonus cash. The Triple Play rewards players for their ability to name musical artists whose complete titles begin and end in the same letter. Players are penalized when a Triple Play opportunity is not converted. These opportunities exist in normal rotation only.
- 60 Should a player name a band/artist whose complete title begins and ends with the same letter (Example:

"Green Frog"), that player collects a \$5000 bonus from the bank.

Should the following player take that letter and also name a band/artist whose complete title begins and ends with the same letter (Example: "Garden Bug"), that player converts the double play and collects \$10,000 from the bank.

The player completing the procedure a third time consecutively (Example: "George Twigg"), completes the Triple Play and collects a \$20,000 bonus from the bank. Should the player fail to convert a Triple Play opportunity, the player must pay a \$5000 penalty to the Final Stage.

The next player begins the process anew.

Benefits also exist for those players able to complete their Arena Tours with a full contingent of five band members. At \$50,000 per band member, the player exchanging five pieces at games' end collects \$250,000! The number of band members a player accumulates is influenced by board moves and card directions.

Spaces on the game board direct players to add or remove band members. In addition, players can exercise Challenge 124 and Rescue 126 cards that add, remove, take, and protect band members. At no time can a player have more than five pieces in the concert platform. Should the board direct a player to "Add Any Piece" when the platform is full, the player instead collects \$25,000 from the bank.

Circumstances may result which cause a player to empty their concert platform of all band members. Play continues normally should this occur. Should the board direct a player to "Return Any Piece" and the platform is empty, the player must pay a \$5000 penalty to the Final Stage. The player does not owe a member if one is added later.

Should a player go bankrupt during the course of play, the player may return band member pieces to the bank for a cash advance. The Banker shall pay one-half of the end-game rate, or \$25,000 for each piece exchanged.

Challenge 124 and Rescue 126 cards perform the functions their titles imply. Exercising them in opportune situations increase a players' chance of winning the game; often at an opponents' expense. A players' board position, cash savings, band size, and turn options can influence when and how to exercise these cards.

Most Challenge 124 and Rescue 126 cards are self-explanatory and prescribe some reward or penalty for their use. Challenge 124 cards allow players to challenge themselves (SELF-CHALLENGE cards only) or their opponents to perform some task. Rescue 126 cards enable players to name alternative musical artists as needed when beginning a turn. Rescue 126 cards also afford players the opportunity to fend off challenges and avoid other troublesome situations.

When a Challenge 124 or Rescue 126 card is entered into play, the card must be read aloud and placed faceup on the board. Upon the conclusion of a turn, the card is returned facedown to the bottom of its respective pile. Unless otherwise noted, a player shall draw either one Challenge 124 or one Rescue 126 card from the deck upon conclusion of a turn. Once the next player has successfully named a band/artist to begin their turn, no other player may draw a card.

Each player can not exceed a total number of eight Challenge 124 and Rescue 126 cards in any combination upon the conclusion of a turn. Should a player exceed this limit, the player must pay a \$25,000 penalty to the

final stage for each card over the limit and forfeit a corresponding number of cards. The opposing player on the right shall randomly select the card(s) to be forfeited from the players' hand. Forfeited cards are then returned to the bottom of their respective piles. Players must count their cards upon request.

Spaces on the game board will direct players to draw Challenge 124 and Rescue 126 cards. Should a player land on such a space, the player must draw the appropriate card. The player's turn is then automatically ended. No additional cards are drawn or played. Should the player now be in violation of the eight card limit, the penalties described above apply.

Challenge 124 cards requiring a player to "Name Three Additional Band/Artists" do not alter the normal rotation of play. After that turn is completed, the next player must use the last letter of the musical artist named to begin the previous turn; not the letter of any of the artists named in response to the challenge. In addition, Triple Play rewards do not apply when fulfilling a "Name Three Additional Band/Artists" challenge.

The sheer quantity and diversity of past and present musical artists creates a huge pool from which players can draw when naming bands and artists. No player can reasonably expect to know, remember, or recognize them all. During play, the possibility exists for a player to name a musical artist an opponent does not recognize. For this reason, the "Battle of the Bands" and "Critics Choice" cards are available to insure fair play.

Challenge cards entitled "Battle of the Bands" may be exercised when a player questions the authenticity of a musical artist an opponent has named. The "Battle of the Bands" card may be used by any player at any time. Only the first player to announce the Battle aloud while presenting the card may do so on a particular turn. When a "Battle of the Bands" card is played, the challenging player can not draw a replacement card from the deck.

When Battle is declared, the challenged player must attempt to verify the authenticity of the named musical artist. To win the Battle, the challenged player must convince a simple majority of his/her opponents that the title in question is a bona fide musical artist. Means of defending a named artist are limited only by a player's knowledge and imagination. Often, naming a song by the artist or a member of the artist's group satisfies the majority. Other times, more elaborate displays of a player's knowledge and/or creativeness are needed. If all else fails, begging may garner sympathy votes! Opponents can not deny common knowledge.

Should a majority of the challenged player's opponents accept the proof given (a quick show of hands will suffice), the challenger is defeated and must pay a \$10,000 Harassment penalty directly to the challenged player. The challenged player is then free to exercise the normal turn options.

Should the challenged player fail to convince the majority of a named artist's authenticity, or a tie results, the challenged player may submit a rescue card entitled "Critics Choice". A "Critics Choice" card rebuffs a "Battle of the Bands" and does not require the challenged player to mount a defense; even if the band/artist in question is obscure, unknown, or a product of the player's imagination! When a "Critics Choice" card is played, no monetary penalty is charged to either player. The challenged player may then exercise the remaining available turn options.

Finally, should a majority of opponents reject the proof given, and the challenged player does not possess or chooses not to play a "Critics Choice" card, the challenged player must submit any other Rescue card from his/her hand to aid in naming an alternative band/artist. For losing the Battle, the challenged player must pay a \$10,000 Embarrassment penalty directly to the challenger. In addition, the challenged player is responsible for any penalty the Rescue card prescribes for its use. The challenged player may then exercise the remaining available turn options.

Challenge cards entitled "Take the Stage" may be used by players only when exercising their turns in normal rotation. When a player is challenged to "Take the Stage", that player must move his/her concert platform to the nearest Stage (count the number of board spaces to determine the closest one) and perform as directed. The first player to land on each Stage collects the \$20,000 bill placed there by the Banker.

"Take the Stage" cards can not be used to move a concert platform to the Final Stage; nor served on a player waiting out a "lost turn". A player does not Take the Stage to respond to all challenges; only those where the card or board specifically says to do so. In addition, a player can not move his own concert platform to a Stage unless he/she plays an lands on a board space directing him/her to do so.

A player can move laterally either forward or backward from the Stage (see the arrows on the game board) depending upon their "Take the Stage" performance. A successful performance or correct answer allows the challenged player to move ahead on their next turn. An unsatisfactory performance or incorrect answer forces the challenged player to exit the Stage from the rear before again moving forward.

The challenged player's opponents shall judge the performance or answer in a fair and equitable manner. A majority shall decide whether the challenged player moves forward or falls back on the player's next turn. All ties go to the challenging player. Common knowledge can not be denied.

Rescue cards entitled "Stage Fright" may be used as needed by a challenged player to block a "Take the Stage" order. Entering a "Stage Fright" card into play allows the challenged player to maintain board position and refrain from giving the requested performance. No penalty is exacted from either player when a "Stage Fright" card is played. The challenged player can not draw a replacement card from the deck if he/she is responding to a "Take the Stage" card. "Stage Fright" cards increase in value as players near the Final Stage.

Having thus described the invention, what is claimed and desired to be secured by Letters Patent is:

1. A method of playing a board game comprising:
  - (a) providing a playing board having multiple contiguous playing spaces, with multiple stage spaces interspersed between playing spaces, a starting space and a final stage space;

- (b) selecting the order in which a player will move by the throw of a pair of dice;
  - (c) providing each player with a quantity of play money;
  - (d) providing a player marker of different color for each player;
  - (e) providing written instructions to the player in each playing space on which a player lands;
  - (f) each player beginning play from the start space by a throw of the dice and moving in a generally clockwise manner around the board;
  - (g) providing Challenge cards and Rescue cards on the board; wherein some of the cards have questions and instructions requiring a player to move to a stage space and answer a question while on the stage space;
  - (h) providing play money to each player at the start of the game;
  - (i) providing band member pieces for insertion into a player's marker;
  - (j) each player at the beginning of a turn, naming a band or musical artist aloud and then rolling the dice and moving his marker forward the number of spaces shown on the dice, the player being able to substitute a Rescue card if he cannot name a band or musical artist;
  - (k) the player performing in the manner described in the space in which his marker lands and drawing either the Challenge or the Rescue card to conclude the turn;
  - (e) all following players beginning their turn by naming a band or musical artist whose first word begins with the last letter of the band or musical artist named by the preceding player, the player playing a Rescue card in his possession if he is unable to name a band or musical artist with the required first letter;
  - (m) the player adding or subtracting band members from his marker as directed by the play of the game;
  - (n) the game ending when all the players remaining in the game reach the final stage, the player amassing the most money being declared the winner.
2. The method of playing a board game according to claim 1, wherein there are two to six players and each player starts with \$100,000.00 in play money, two band members in his marker and three Challenge and Two Rescue cards.
  3. The method of playing a board game according to claim 1, wherein a player must state the band or musical artist within a specified period of time.
  4. The method of playing a board game according to claim 1 wherein a player is disqualified from further play by failing to name a band or musical artist or play a Rescue card during his turn.
  5. The method of playing a board game according to claim 1, wherein a player obtains a bonus of prize money when he names a band or musical artist whose name begins and ends with the same letter.
- \* \* \* \* \*